

THE SECOND PUBLIC HEARING OF THE DEPARTMENT OF
ENERGY FOR THE PROPOSED RULE FOR THE GUIDELINES
FOR THE PHYSICIAN PANEL DETERMINATION OF WORKER
REQUESTS FOR ASSISTANCE IN FILING FOR STATE
WORKERS' COMPENSATION BENEFITS

Thursday, October 25, 2001

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Ms. Kate Kimpan, Senior Policy Advisor
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Dr. Joseph Falco, Medical Doctor
Office of Worker Advocacy

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1 (The Second Public Hearing of the
2 Department of Energy for the
3 Proposed Rule for the Guidelines for
4 the Physician Panel Determination of
5 Worker Requests for Assistance in
6 Filing for State Workers'
7 Compensation Benefits was called to
8 order at 4:00 p.m. at the Radisson
9 Hotel at the Cincinnati Airport,
10 Hebron, Kentucky.)

11 MR. CARY: Good afternoon. I'd like
12 to call our public hearing to order this
13 afternoon. Thank you for taking the time
14 to be here today.

15 I'm Steve Cary, the United States
16 Assistant Secretary for Environment
17 Safety & Health for the Department of
18 Energy and the Acting Director for the
19 Office of Advocacy.

20 I'm joined by Kate Kimpan, our
21 Senior Policy Advisor, and Dr. Joe Falco,
22 a medical doctor who's on my right, who
23 works with us in the Advocacy office.

24 We're here today to consider your
25 public comments on the proposed rules and

1 procedures that DOE will use to carry out
2 its responsibilities under the Energy
3 Employees Occupational Illness
4 Compensation Act. We refer to this rule
5 as the Physicians Panel Rule.

6 Subtitle D of the Act authorizes the
7 Secretary of Energy to provide
8 assistance to DOE contractor employees
9 who are ill due to workplace exposures to
10 a toxic substance. If a worker is
11 eligible, DOE submits the worker's
12 application to a Physicians Panel, whose
13 members are chosen by the Department of
14 Health and Human Services.

15 If the Physicians Panel makes a
16 positive determination that the claim is
17 valid, then the Advocacy Office will
18 assist the applicant in filing a claim
19 with the relevant State Workers'
20 Compensation system.

21 In addition, DOE will not contest
22 the claim, and to the extent permitted by
23 law, will direct the DOE contractor not
24 to contest the claim.

25 I want to emphasize that at this

1 point, we have a proposed Physicians
2 Panel Rule. We make it very clear in the
3 Preamble to the Rule that we will fully
4 consider alternatives in a number of key
5 areas. Specifically, DOE requests
6 comments on, 1) whether the use of the
7 screening mechanism before an application
8 is reviewed by a Physicians Panel is
9 consistent with the statutory framework;
10 2) whether the use of applicable State
11 criteria or uniform Federal criteria
12 better achieve the statutory objectives;
13 and, 3) the appropriate definition of a
14 toxic substance.

15 We take the public comment process
16 very seriously. At the same time, we
17 believe it's very important to have the
18 Physicians Panels operating as quickly as
19 possible processing claims.

20 When we issued the proposed rule
21 making in September, we announced a
22 30-day public comment period and a public
23 meeting for September. Following the
24 tragic events of September 11th, and at
25 public request, we postponed the meeting

1 until October 10th and extended the
2 public comment period 60 days.

3 This is the second public meeting
4 that we are holding. As I said earlier,
5 the first was in Washington DC on October
6 the 10th, earlier this month.

7 With that, let me lay out a few
8 ground rules: Speakers will make their
9 remarks in the order that I indicate, and
10 you're asked to limit your remarks to ten
11 minutes.

12 Members of the panel -- the members
13 of the panel, Kate, Joe and I, are here
14 to listen and may not respond to
15 questions or comments. Although we may
16 ask questions of a clarifying nature.

17 Anyone wishing to speak who did not
18 preregister -- they'll just deal with
19 you, Jeff, as they come in here.

20 Thank you once again. I know we
21 have a large audience today. Although
22 I have to leave at 7:00 o'clock this
23 evening to return to Washington, Dr.
24 Falco and Kate Kimpan will remain as long
25 they need to, to hear your testimony

1 because we're very interested in it.

2 So, with that, the first speaker
3 will be Esther Downey, and the following
4 speaker, just to give you some
5 preparation, will be Ben Gaylor.

6 Esther?

7 MS. KIMPAN: We picked yours up
8 there already. We didn't realize that
9 you had --

10 MR. CARY: We didn't know that you
11 had copies.

12 MS. DOWNEY: Do you want me to
13 proceed?

14 MR. CARY: Yes, please.

15 MS. DOWNEY: Okay. My name is
16 Esther Downey.

17 MR. CARY: Would you mind speaking
18 into the mic?

19 MS. DOWNEY: Can you hear me?

20 MR. CARY: Yes.

21 MS. DOWNEY: My name is Esther
22 Downey. At 2002, I will have worked at
23 the USEC Portsmouth Plant for 30 years.

24 (Reading)

25 "I started on February 2, 1972.

1 When I began my employment at the
2 Portsmouth Gaseous Diffusion Plant
3 in Ohio, I was assigned to work in
4 the stenographer pool. I was sent
5 to replace any absent clerk, typist
6 or stenographer who may have been
7 absent for a day or longer.
8 This job entailed going to buildings
9 such as the X-705, which contained
10 many hazardous chemicals. I was not
11 informed on how to safeguard myself
12 from radiation or chemical exposure.
13 I used the same restroom as the
14 female chemical operators.
15 "I first noticed blood in my
16 urine in March 1975. The plant
17 doctor arranged for me to go to a
18 local urologist. I was diagnosed
19 with a 'transitional cell carcinoma'
20 bladder tumor in April 1975. From
21 the day I first met my doctor until
22 his retirement in December 1999, I
23 remained the youngest patient he had
24 seen with this type of tumor. He
25 discussed my case at various medical

1 meetings and conventions. He told
2 me that I was an unlikely candidate
3 for this type of tumor in that I was
4 young (30), female, a nonsmoker,
5 and did not work in the rubber
6 industry where bladder tumors were
7 more prevalent. I have undergone
8 annual Cystoscope exams and IVPS
9 since my cancer was diagnosed.

10 "I filed a claim through the
11 Energy Employee Occupational Illness
12 Compensation Program Act of 2000.
13 The Department of Labor has informed
14 me that they are pursuing my claim
15 as a nonspecial exposure cohort
16 cancer claim. They have forwarded
17 my records to NIOSH for dose
18 reconstruction. The reason they
19 gave for this action is because I
20 contracted cancer before I had been
21 employed for a total of five years.

22 "Radiological records during this
23 period have proven to be inaccurate
24 or nonexistent. I worked in the
25 administration building but was sent

1 into chemical and radiological
2 areas. Administration employees
3 were not even give unrinalysis. If
4 my film badge was read, it may have
5 been read on an annual basis. I was
6 never given the results.

7 "I, as well as my fellow brothers
8 and sisters, believed the Department
9 of Energy was safeguarding our
10 health and welfare. By the time we
11 found out this wasn't the case, it
12 was too late for many of us,
13 including my uncle who died of
14 throat cancer.

15 "It is time for the DOE to live up
16 to its moral and lawful
17 responsibilities. Do not follow in
18 the footsteps of Department of Labor
19 in addressing these serious health
20 issues and illnesses. It appears
21 that the DOE is placing more
22 obstacles in the worker's pathway
23 to achieving a successful State
24 claim.

25 "The aim of Congress was to make

1 it easier for workers by setting up
2 Physician Panels that would use
3 uniform criteria for determining if
4 a worker's illness was job related.
5 These rules fly in the face of that
6 aim. It is really disheartening to
7 see the only legislation in 50
8 years addressing atomic workers
9 health problems be overturned by DOE
10 rules."

11 Thank you.

12 MR. CARY: Ben Gaylor is the next
13 speaker. Following him will be Eula
14 Bingham.

15 MR. GAYLOR: I'm Ben Gaylor.
16 I'm a retired coordinator and worker in
17 the Hamilton Protection Program from Oak
18 Ridge. And I spent 40 years in the K-25
19 plant, and I'd like to reiterate the
20 point that we may continue, that
21 information regarding all aspects of this
22 program should be widely disseminated at
23 Oak Ridge, and that meetings should be
24 held in Oak Ridge, Paducah, and
25 Portsmouth.

1 A lot of our people are sick and are
2 not able to attend these meetings in
3 Washington, Cincinnati, all over the
4 country. They barely can get to the
5 local meetings.

6 Processes such as these continue to
7 give the appearance of openness to the
8 public when, in fact, the same intends
9 in defeating and creating administrative
10 obstacles to the legitimate claims of
11 employees that are still at work with
12 business as usual.

13 The lack of candor has been made
14 endemic in 60 years as part of what was
15 creating the existing problems in the
16 first place.

17 The intent of Congress is certainly
18 to expedite the legitimate claims being
19 paid. This has not changed in a year.

20 The need for an act of Congress was
21 partly because existing State Workers'
22 Compensation programs are not geared to
23 handle this type of claim for chronic
24 exposures. Workmans' Compensation should
25 now become a few jobs, which will result

1 in many deserving individuals being

2 denied their claims.

3 And we aren't getting any help from

4 you people out there on these State

5 claims.

6 Thank you.

7 MS. KIMPAN: Ben, can we have that

8 copy or should we just rely on the --

9 MR. GAYLOR: No. You can have it.

10 MS. KIMPAN: Thanks so much.

11 MR. CARY: The next speaker will be

12 Eula Bingham, and following her will be

13 Vina Colley.

14 DR. BINGHAM: My name is Eula

15 Bingham. I'm a: (reading)

16 "Professor of Environment

17 Health specializing in occupational

18 health."

19 And I am a toxicologist.

20 "I've also served as an Assistant

21 Secretary of Labor and Director of

22 the Occupational Safety and Health

23 Administration during the Carter

24 Administration."

25 Currently, I have, as a project, a

1 Medical Surveillance Program for former
2 Construction Workers at Oak Ridge for all
3 three sites.

4 I would like to address three
5 issues, and then I'll comment on an
6 additional one that was asked as a
7 question.

8 First, on causation: I believe
9 that: (reading)

10 "The Physician Panels should
11 use a proposed language of 'more
12 likely than not', but the definition
13 of the word 'caused' should be
14 interpreted as 'contributed,
15 aggravated, exacerbated, or
16 caused'. Occupational/Environmental
17 diseases are multi-factorial and
18 this revised interpretation more
19 accurately reflects this situation.

20 "Physician Panels should not use
21 State-based criteria to make
22 judgments regarding causality. Many
23 States including my own, Ohio, have
24 judgments and language on causality
25 that is historical and/or political

1 and does not reflect modern concepts
2 regarding complicated diseases such
3 as cancer. Concepts such as latent
4 period frequently must be explained
5 and require a lawyer to become
6 involved. This list of cancers
7 compensated under the Energy
8 Employees Occupational Illness
9 Compensation Program Act may not be
10 recognized by certain States.
11 However, the Federal statute is
12 based on more up-to-date causality
13 agreed upon by the National Cancer
14 Institute and the National Academy
15 of Sciences."

16 And I'm on one the most recent
17 steering communities that helps makes
18 some of those judgments. (Reading)
19 "Leaving such causality issues to
20 State Workers' Compensation will
21 undoubtedly lead to litigation,
22 unnecessary costs, and loss of hope
23 one again for those who gave so much
24 and had the hazardous nature of
25 their jobs overtly and covertly

1 hidden from them. A uniform
2 standard for compensation is
3 critical."

4 Now, I understand that it will be
5 difficult for those diseases that are not
6 specifically mentioned in the
7 legislation, but there could be a, the
8 Physician Panels could come up with a
9 consensus on some of these.

10 Under Medical Examinations, I must
11 ask: (reading)

12 "How can the Department of Energy
13 ask claimants to pay for their own
14 medical tests that these Physician
15 Panels require? Former Worker
16 Surveillance Programs can help
17 alleviate this cost to individual
18 claimants."

19 One of the questions that was asked
20 was what is a toxic substance. Well,
21 I've been answering this for 30 years or
22 more. A toxic substance is a physical or
23 chemical agent, physical or chemical.
24 Radiation is physical, and we know what
25 are chemicals. Also a physical agent is

1 vibrations that cause hearing loss. A
2 physical or chemical agent that causes
3 adverse health effects.

4 Some of these adverse health effects
5 may have been demonstrated in
6 experimental situations.

7 Just one word about the compensation
8 act itself. If this law is to be taken
9 seriously and not become just another
10 litigation nightmare for workers:

11 (reading)

12 "The Department of Energy must
13 provide the funds to pay for the
14 claims at sites where there are no
15 longer contracts with the former
16 employers, and work with current
17 contractors to provide appropriate
18 procurement mechanisms to pay to
19 the claims.

20 "Otherwise, contractors who
21 consider themselves not at fault
22 will be penalized and litigation is
23 certain to follow. Workers will be
24 discouraged from filing claims"
25 as I know very well from past interviews

1 with workers in the Oak Ridge, Tennessee,
2 area. (Reading)

3 "Once again, if the Congress is
4 serious about diseased and/or dead
5 nuclear workers, the money must back
6 the words."

7 Thank you.

8 MR. CARY: Thanks very much. The
9 next speaker will be Vina Colley, and
10 following her will be a Robert Elkins.

11 MS. COLLEY: Hi. My name is Vina
12 Colley, and I'm a resident of McDermott,
13 Ohio, and a former electrician from the
14 Portsmouth Gaseous Diffusion Plant, and
15 I'm still on the active plant's recall.

16 (Reading)

17 "Why did the DOE and the
18 Congressional process on the sick
19 worker compensation bill only place
20 significance on Radiation,
21 Barium, Cesium for coverage for
22 the compensation, sidetrack chemical
23 injuries for the gas diffusion
24 workers? Many gas diffusion workers
25 have been exposed to chemicals

1 called Uranium HexaFlouride (UF6)
2 that generates very toxic hydrogen
3 fluoride (HF) due to countless
4 releases in the course of daily
5 employment DOE has paid Claims for
6 (UF6) exposure that have been sent,
7 and have seen, and this chemical
8 caused some of the earliest deaths
9 in the Manhattan Project. Where is
10 this representation in the
11 compensation bill?
12 "Every gas diffusion site has the
13 above chemicals and more, but many
14 workers have not been tested for any
15 of the above chemicals. Why not?
16 Testing is missing from even the
17 most obvious of the chemical health
18 effects in the gaseous diffusion
19 plants. Fluorides have caused
20 serious and environmental problems
21 from industry for over 100 years and
22 fluorides in the environment causes
23 health problems for a long time.
24 How did DOE avoid these chemical
25 problems that all other fluoride

1 industries have?

2 "According to a 1985 GAO report,

3 the workers at the Portsmouth

4 Gaseous Diffusion Plant in Piketon,

5 Ohio, had the highest radiation

6 exposures of all the gaseous

7 diffusion plants. This was because

8 we did high assay weapons grade

9 Uranium processing from 1954 until

10 1992. We also know that with these

11 high radiation exposures there is a

12 hand-in-hand relationship to high HF

13 and internalized fluoride exposure.

14 In fact, for UF-6 exposure, there

15 are 1,000 Fluorine atoms for every

16 Uranium atom retained in the body.

17 Why are we stalling paying these

18 chemically sick workers with

19 unchanged State Compensation Systems

20 that have failed to help for 50

21 years when the DOE admitted it put

22 us in harm's way? From recent

23 worker reports, it appears the new

24 bill is stalling compensating many

25 clearly affected workers from

1 various DOE exposures. Why? How do
2 the high radiation exposure and free
3 radicals and toxic metal cells
4 damage from Uranium combined with
5 Fluorine chemical free radicals like
6 damage?
7 "Why did Congressional committees
8 and government agencies leave out
9 hysterectomies from the exposure
10 expected illness list? During the
11 Portsmouth hearings, Mrs. George
12 testified that five out of six women
13 in her department had
14 hysterectomies. It has been
15 established in research that many
16 metal toxins and fluorides have
17 affiliated with the reproductive
18 tract. During the time of the
19 hearing, the Representatives were
20 very concerned over this issue!
21 I don't work in Mrs. George's
22 Department, but I also had three
23 tumors and a total hysterectomy.
24 Was this left out because it deals
25 strictly with women?"

1 I have inserted a page from Dr. Shannon's
2 book that showing, that shows you where
3 Plutonium and things hurts the
4 reproduction system. (Reading)

5 "Again, I ask why were
6 hysterectomies left out?

7 "DOE and the Government did great
8 media coverage for two workers,
9 which was heartbreaking (one
10 from Portsmouth, Ohio, and the other
11 from Paducah, Kentucky). The rest
12 have to go through much more
13 harassment with paperwork. Larry
14 Day (age 56) just got a phone call a
15 couple of days ago saying it will
16 take another 30 days to check out
17 his records. I am here to tell you
18 that Larry is so sick that he
19 doesn't have 30 days left in this
20 world.

21 "The plant has all the information
22 on these workers that it needed to
23 qualify us for health compensation.
24 Workers have been studied from the
25 time they entered the work site.

1 Groups like NIOSH, Center for
2 Disease the CEDAR program, the
3 Plutonium Registry, now the Uranium
4 Registry.

5 "Enough is enough. We all had to
6 have security clearance, and you
7 have the records. Please stop all
8 the bureaucratic hurdles that you
9 are putting these sick and dying
10 workers through.

11 "Your defective bill rules would
12 force workers to be pushed aside
13 with no help. DOE is wrong in the
14 interception of the law that
15 Congress passed set aside State
16 eligibility criteria. This was
17 wrongly derailed this litigation
18 workers claims.

19 "Each State will be different when
20 workers have to apply for
21 compensation. For instance, in Ohio
22 'you have to be medically diagnosed
23 that your illness or disease is
24 work-related'. Most workers don't
25 even know the material they were

1 working around, so you can't
2 reconstruct something you don't know
3 about.

4 "The lack of documentation, many
5 records altered, falsification, or
6 even destroyed and the significant
7 amount of time has passed since many
8 workers first contracted or died
9 from their occupational disease
10 continue to implement sick workers.

11 "Some of my coworkers are getting
12 papers to sign that they don't have
13 an attorney. For old claims (like
14 mine) you had to have an attorney to
15 fight the system because we don't
16 have, we don't know how to keep the
17 claims going. Can you tell me how
18 this is going to affect the already
19 approved claims?

20 "I just had to get an attorney for
21 my Workers' Compensation because Dr.
22 Sheet reviewed my extended chart
23 without seeing me and discontinued
24 all but two of my medications.

25 Some of the medication like Lasix

1 for pulmonary function and inhalers
2 for lung problems were taken away,
3 and I am now having to pay for my
4 own medication myself. What about
5 the stress and depression these
6 workers have gone through fighting
7 for their health? Why wasn't that
8 added to the bill? Even Workers'
9 Comp. allows for depression. Many
10 have lost everything.

11 "I, and many others like me that
12 lobbied in DC from the start by
13 getting the Representatives to see
14 that workers were sick and dying,
15 have been left out of this process.
16 I, myself, have been trying to get
17 the Congressional representatives to
18 listen clear back in the 1980s,
19 letting the representatives know
20 that claims had been paid for
21 radiation exposure since 1945. And
22 I have a list at home of those
23 workers and the pitiful monetary
24 amount each dying worker was paid.
25 Sounds like business as usual for

1 DOE and this defective compensation
2 bill.

3 "I will now take this opportunity
4 to inform you on developments in my
5 situation and case against the
6 plant. I feel unfortunate events
7 that I have endured are about to
8 occur to many other sick workers
9 entering the compensation program
10 developed by DOE/DOD and our
11 Representatives.

12 "This -- there is clear evidence
13 in my case that have I been done
14 wrong by the plant's management and
15 cheated out of the following: my
16 job, my benefits, my pension, and
17 more importantly my health.

18 Secretary O'Leary, while in office,
19 met with me and instructed her staff
20 to take care of my problems/issues,
21 which as of today still remain
22 unresolved. Therefore, I am asking
23 you to pick up where Secretary
24 O'Leary left off. Please order the
25 Portsmouth Gaseous Diffusion Plant

1 contractor, the union, and your
2 staff personnel to resolve my case.

3 Show me that this office really
4 cares about the wrong it has done.

5 "In September of 1999, the workers
6 at Piketon and other nuclear sites
7 were told that our government put us
8 in harm's way. It is clear in my
9 records that I have been exposed to
10 radioactive material and toxic
11 chemicals and have gone through many
12 medical testing and treatments,
13 proving my exposure. For
14 compensation, I ask to be reinstated
15 back in June 19, 1987.

16 Justification for this date in
17 included below."

18 And could I have a glass of water?

19 (Reading)

20 "The following is a summary of
21 what I and other workers have
22 already experienced with the
23 Workers' Compensation system
24 unfortunately will be repeated by
25 workers filing new claims. Unless

1 the rules for Workers' Compensation
2 are changed, workers will not
3 receive help and their claims will
4 be denied and dismissed.

5 "As the health problems resulting
6 from the DOE plants under Oak Ridge
7 Operations become more apparent and
8 known by the public, and an in-depth
9 look needs to be taken at the
10 proposal for aiding those whose
11 health has been damaged by these and
12 other DOE operations. This is
13 occurring not only in Ohio, but also
14 in other States as well.

15 "Personally, I am more than
16 \$75,000 in debt for fighting a
17 system that is so crooked. I have
18 been able to aid in breaking every
19 major story about the Portsmouth
20 plant, including the undiluted
21 Plutonium that was shipped to the
22 site.

23 "For my own background, my own
24 Workers' Compensation was awarded
25 Chemical Radiation exposure on March

1 the 6th, 1987 -- 1983. The award
2 was for Fume/Vapor Pulmonary Edema,
3 Fume/Vapor Respiratory Disease,
4 Intrathroacic Injury whole body, and
5 Depression Disorder, Neck and face
6 splash with contusion of the eyes
7 from a splash on the face. All
8 these conditions were contracted
9 while working with Trichlorethylene,
10 PCB, and other hazardous chemicals.

11 "These hazardous chemicals were
12 contaminated with Uranium and other
13 daughter products. In addition, the
14 company was aware of this
15 contamination, while they withheld
16 this information from plant
17 workers.

18 "My documented problems since the
19 exposure has included three tumors
20 removed from my stomach in 1987, a
21 total hysterectomy, and a tumor
22 removed from the back of my head in
23 1998. Chemical Bronchitis,
24 shortness of breath, thyroid
25 problems, rashes, loss of hair,

1 irritable bowels, allergies, stomach
2 problems, chemical depression,
3 gastro-intestinal upset, memory
4 loss, osteoarthritis, fibromyalgia
5 no immune systems, and organic brain
6 syndrome secondary to TCE. I should
7 note that the company gives us all
8 prehire physicals, and only hires
9 healthy workers.

10 "It has been a joint effort by the
11 DOE, its contractors, Attorneys
12 Vorys, Slater & Pease in Columbus,
13 Ohio, the medical staff at the
14 plant, and the Ohio Industrial
15 Bureau Workers' Compensation office
16 to cover up the claims. Portsmouth
17 workers are referred to doctors who
18 deny claims, specialize in practices
19 that differ from our symptoms, and
20 who are getting paid without
21 examining us properly. In talking
22 with other workers, this has
23 happened at other sites as well. My
24 personal records have been
25 falsified. Plant representatives

1 told doctors that a one-time splash
2 caused all my problems. They also
3 informed doctors that I had diseases
4 that I never heard of. I have been
5 ordered to take many tests,
6 including X-rays that I even get
7 sick from taking. Ironically, I
8 received no chemical testing from
9 any of the doctors they sent me to.
10 Many times no test were ran. One
11 common practice was to be sent to
12 doctors the plant representatives
13 knew would turn us down. One
14 example of this is Dr. Herbert
15 Grodner in Columbus. Court records
16 revealed that he was paid \$325 for a
17 15-minute evaluation of worker's
18 claims. I was one of many sent to
19 Dr. Grodner and denied. It doesn't
20 take much to realize that if Dr.
21 Grodner reviews 100 patients in less
22 than a week, he would make \$32,500.
23 If Dr. Grodner, or other referred by
24 the plant's officials approved the
25 worker's claim, then a steady stream

1 of quick and easy income would be
2 diverted elsewhere. Also, how can
3 any physician make such an important
4 decision in such a short length of
5 time?

6 "Another example of the apparent
7 covering up of legitimate claims: I
8 was approved on medical leave, which
9 means that my employer paid the
10 difference of what Workers'
11 Compensation didn't pay. I
12 was sent to Dr. George Esham in June
13 of 1987, who was told to check me
14 out but not to run any test because
15 Workers' Comp. would not pay for the
16 test. He said my stomach was
17 somewhat fatty, but he could not see
18 why I couldn't return to work. From
19 this report, I was taken off
20 Workers' Compensation. As a result
21 of this checkup, I was immediately
22 placed on layoff status and I was
23 still sick. Because of his report,
24 I lost my benefits and seniority.
25 In August of 1987, Dr. Song called

1 me at home and stated that due to
2 the enlargement of my stomach since
3 my last ultrasound and due to my
4 chemical involvement from the plant,
5 he felt we should do emergency
6 surgery. I could have died or even
7 had more problems if I had listened
8 to the doctors that the plant or the
9 State sent me to.

10 "The Industrial Commission ordered
11 Workers' to refer me to a
12 toxicologist. When I arrived at Dr.
13 Kelly's office in Columbus, Ohio (a
14 toxicologist), he was told to check
15 me for depression. That obviously
16 is not his area of expertise.
17 However, he did think I was
18 depressed. Dr. Greer, of the
19 Industrial Commission, said that I
20 had a pre-existing depression
21 problem. He developed this position
22 with a one-time, 20-minute office
23 visit. My personal doctor, Dr. Jack
24 Border wrote to the Bureau of
25 Workers' Compensation and stated

1 that 'Vina has been seen in my
2 office and treated for Posttraumatic
3 Stress Disorder and adjustment
4 disorder for depression'. Dr.
5 Border had previously written
6 several letters regarding this topic
7 to Workers' Compensation. He also
8 stated that after careful review of
9 my chart he could see that my
10 psychiatric problems began after the
11 date of my reported toxic exposure.
12 Dr. Border is still my personal
13 physician.
14 "Just last month, the Workers'
15 Compensation stopped paying for my
16 medication, except for two
17 prescriptions. In addition, they
18 continue to give no credibility to
19 my personal doctor's finding. Keep
20 in mind that my personal physician
21 did perform several batteries of
22 tests and did arrive at their own
23 diagnosis. My doctors and some of
24 my medicine are still being paid by
25 Workers' Compensation.

1 "In 1995, in a hearing by the
2 Industrial Commission, I was called
3 by the hearing officers a 'leader of
4 a citizen antinuclear energy group
5 and was proven to show great
6 leadership'. However, the
7 Industrial Commission Hearing
8 Officers did not seem to care that
9 my physical health was deteriorating
10 due to my exposure.

11 "On May the 31st, an arbitration
12 hearing for two ladies and myself
13 was held at Piketon, Ohio. Dr.
14 Dean, from the Piketon's plant
15 stated that 'Mrs. Colley presents
16 a classic case of an individual who
17 should never work at an industrial
18 plant. Unlike most people, Mrs.
19 Colley has an extreme
20 hypersensitivity to smoke, dust,
21 chemical fumes and odors of all
22 kind'. Dr. Dean's opinion is that
23 my condition is of permanent nature.
24 If this is the case, then why did
25 they take me off Workers' Comp. in

1 1987? I believe that the company
2 and Dr. Esham committed fraud to
3 the Bureau of Workers' Compensation
4 by stating that I was able to return
5 to work in 1987. Once I was denied
6 Workers' Compensation, I signed up
7 for Social Security and total
8 disability, which I received. My
9 question to you is: How could
10 this facility get by with saying in
11 arbitration case that I was unable
12 to work, but yet in a Workers'
13 Compensation hearing, they stated
14 that I was able to work. They are
15 contradicting themselves by not
16 paying my claim, and yet are still
17 preventing me from returning to
18 work.

19 "Another example of a worker being
20 sent to the wrong specialist is
21 Owen Thompson. He was sent to a
22 plastic surgeon to evaluate for a
23 brain tumor. Owen is now dead.

24 "In the case of the late Vern
25 Web, his wife received \$500 after

1 his death from Workers'
2 Compensation. She was unable to
3 prove that he had died from chemical
4 exposure. Years later, I discovered
5 documentation stating that Vern had
6 over 300,000 counts of contamination
7 on his body. Also stated in the
8 paper was his account of being told
9 by plant personnel to go back to
10 work or go home.

11 "These are but a few of the
12 examples of the failure of the
13 Workers' Compensation system, and
14 this varies greatly from State to
15 State. How over -- however, the
16 program is intended to -- it
17 must protect any Social Security and
18 retirement benefits we have spent
19 our entire working careers to
20 accumulate. These benefits must not
21 be taken away from us.

22 "Lastly, there are DOE records,
23 which document Barium at Piketon,
24 yet no present or former workers
25 have been tested for Barium

1 sensitivity. Every site, which has
2 used Barium and done specific
3 testing, has found disease and
4 sensitization. Plutonium,
5 Neptunium, Fluorides, Nickel and
6 many other dangerous chemicals are
7 also to be dealt with by your
8 office. All these materials have a
9 long latency period between
10 exposures and health problems. This
11 is a situation not usually dealt
12 with by Workers' Compensation system
13 more used to dealing with injuries
14 and recovery, not continuing
15 deterioration of health. A national
16 system, drawing on the experience of
17 all sites and input from the
18 affected workers would seem to be a
19 more workable solution.

20 "We have been informed by a
21 Workers' Compensation that if the
22 current laws are not changed,
23 workers' and widow's claims will
24 continue to be denied. My question
25 to you is the Department of Labor

1 going to ensure the workers have a
2 fair system in place to process
3 their claims? Otherwise, as I
4 stated, the claims will be denied
5 due to lack of chemical exposure
6 proof on the worker's behalf."

7 I have another short page, and then
8 I'm done. I want to say it was such a
9 short notice of this meeting, not a lot
10 of publicity on it, and the electric went
11 off, and my computer and I had trouble,
12 so if I don't seem like I'm really
13 prepared, that's what's going on.

14 (Reading)

15 "The root of the problem is the
16 fact that the DOE workers' bill is
17 not a presumption bill like
18 RECA or the 1988 Atomic Veterans
19 Compensation Act and does not
20 provide automatic compensation for
21 illnesses. (Although there is
22 some ambiguity about the levels of
23 presumption at the gaseous diffusion
24 plants, the majority of DOE sites
25 have no presumption.) The DOE

1 workers bill requires a
2 determination of 'causation' before
3 payment can be made. Even medical
4 payments depend on this
5 determination of 'causation'. This
6 type of compensation program is not
7 new, however. The Atomic Veterans
8 have had such a law on the books
9 since about 1986. The program is
10 administered by the Veterans
11 Administration with input from the
12 Defense Threat Reduction Agency
13 (DTRA), formerly the Defense Nuclear
14 Agency. That program, however, does
15 not work. Only about a dozen
16 veterans out of around 20,000
17 applications have received
18 compensation under this 1986
19 nonpresumptive law. For this
20 reason, Congress passed the Veterans
21 Presumptive Law in 1988 to correct
22 the difficulties in the earlier
23 law.

24 "There is almost an exact parallel
25 between DOE workers bill and the

1 1986 nonpresumptive law for the
2 Atomic Veterans. Only the agency
3 names have changed, but the
4 functions are the same. The VA and
5 the DOL/DOJ are the application
6 payment agencies for the two
7 programs representative. The DTRA
8 and the NIOSH/DOE are the dose
9 reconstruction estimate agencies
10 respectively. And the NIC/SENES
11 is the 'probable of causation (PC)'
12 agency for both the VA and the
13 DOL/DOJ claims and is based on the
14 dose levels supplied by the
15 'estimators'. All compensation
16 payments will be predicted upon the
17 PC values determined for each worker
18 on the basis of his or her estimated
19 dose. Although the DTRA and
20 NIOSH/DOE act as administrative
21 agents for the 'dose
22 reconstruction', the actual numbers
23 are 'determined' by SAIC under DOE
24 contract. DOE provides funding for
25 all DTRA, NIOSH, SAIC 'dose

1 reconstruction' activities. The
2 criterion for compensation will be
3 based on the concept of 'as likely
4 as not', the PC must be greater than
5 or equal to 50%. (The question
6 remains whether the midpoint PC or
7 the upper 95 or 99 confidence limit
8 will be used.) Only a relatively
9 small minority of workers will meet
10 this criterion for causation and
11 therefore only a tiny minority will
12 be compensated at all.

13 "There are many problems with the
14 'dose reconstruction' for both
15 external and internal exposures to
16 workers and the calibration PC
17 values are highly uncertain, but
18 these so-called 'quantitative'
19 numbers will, nevertheless, be used
20 to determine which worker will be
21 compensated and which ones will not.
22 The DOE does not want this program
23 because it knows there will be a lot
24 of unhappy customers, and if it
25 really fits into their existing

1 compensation programs anyway. It's
2 not the DOE's fault that the program
3 doesn't fit. It's the fault of the
4 Congressional committees and
5 Government agencies who drafted the
6 law."

7 MR. CARY: Thanks very much. The
8 next speaker is Robert Elkins. Following
9 him will be Sam Ray.

10 MR. ELKINS: My name is Robert
11 Elkins, and I began working at the
12 Portsmouth Gaseous Diffusion Plant in
13 1954. I worked as a Chemical Operator
14 over 34 years.

15 We used Lithium gloves to move salt
16 mass. Daily we had to eat heavy air. We
17 crushed Uranium with a, on the rod mill
18 to make it a powdery form of it.

19 We crushed Uranium on the rod; mill
20 to turn it into powder to run it through
21 -- well, it was then screened and sifted
22 into feed silos to put it on the reactor.

23 The ventilation was very poor in the
24 area. I didn't know until two years ago
25 the black oxide on the reprocessed fuel

1 rods become reactors. I am almost
2 certain that they had Barium and
3 Plutonium in them because of the invivo
4 counts I had. It shows up byproducts on
5 Barium.

6 I lost my place.

7 We know they were high assay fuel
8 rods to be put through and sent back to
9 the cascades.

10 In 1965 while working in the
11 reactor, six workers and I were sent to
12 Oak Ridge for invivo counting for
13 insoluble Uranium, insoluble is you don't
14 -- Uranium in your body and you don't
15 pass it out. It stays there.

16 Bill McCallen (phonetic) and myself
17 were told that our results were three and
18 a half times the body presence of
19 allowable limits. Every month or two the
20 supervisor of industrial hygiene, Ralph
21 Tibbet (phonetic), would write to measure
22 our exposure. If anyone could tell me
23 where those letters are, I would like to
24 have a copy of them. The supervisor
25 would carry the packages of our case to

1 reduce the, or help reduce all over the
2 country.

3 He intended to find out how to get
4 our count down.

5 I went to my personal physician, but
6 he told me I should return to the plant
7 doctor because he was the most
8 knowledgeable in the field of Uranium.

9 The plant doctor had us urinate in
10 gallon jugs around the clock for probably
11 approximately two months. They
12 discovered this was useless to determine
13 that our condition because Uranium
14 doesn't dissolve in body fluid.

15 We were then placed on a recheck
16 every six months.

17 The half life cycle of Uranium was
18 explained to us about how this would
19 occur in our bodies. They said the count
20 would need to get down below 75 on two
21 successive counts in a row to, for us to
22 be removed from restriction.

23 At my retirement, mine was still
24 not, still above 75. It leveled off at
25 approximately 100. We asked the plant

1 doctor various questions that could it be
2 in danger to our families in any way.

3 The doctor didn't like being asked
4 the questions. He stormed out of the
5 room. Later, I went to his office alone,
6 and he told me as far as he knew, nothing
7 would happen for ten years.

8 The Uranium would take the red, it
9 takes the red blood cells out of your
10 blood and destroys them.

11 One day I called the plant hospital,
12 and the doctor told me -- one day I was
13 called to the plant hospital to a Dr.
14 Moore from the Hanford Research
15 Laboratory asking me to be on the Uranium
16 Registry List. They offered me \$500, my
17 wife \$500 to allow them to perform an
18 autopsy in the event of my death.

19 It was explained that insoluble
20 Uranium in animals moves through the body
21 to any organ that acts as a filter. They
22 wanted to find out where it had moved in
23 my body. And my wife is not signing the
24 autopsy.

25 In 1985, my failing health forced me

1 to retire early. Bill McCallen was
2 diagnosed with Leukemia and died in his
3 40s. I just knew I would be next. I did
4 not have symptoms of Leukemia, and
5 the doctors told me -- I did have
6 symptoms of Leukemia, and the doctor told
7 me it would go away.

8 My central nervous system is not
9 healthy, and I have had two nervous
10 breakdowns, kidney, bladder and urinary
11 problems, acute bronchitis, breathing
12 problems, and I also had a massive heart
13 attack, and open heart surgery. I had a
14 disk completely dissolve in my back and
15 had to have back fusion or be in a
16 wheelchair the rest of my life.

17 The seven of us filed a State
18 Workers' Compensation claim. We had a
19 hearing on one of the claims in 1967;
20 somehow, Goodyear had the claim put on a
21 ten-year hold, and in that period, after
22 the ten-year hold, it died after six more
23 years.

24 And the Compensation destroyed
25 in, during the claims.

1 When I read about the new Federal
2 law, I began to gather my records of
3 exposure. I went to the Bureau of
4 Workers' Compensation to file a State
5 claim. They told me my records had been
6 destroyed, and I could not reopen my dead
7 claim.

8 The Department of Energy needs to
9 help us with these claims. We were loyal
10 workers for this company when we were
11 exposed to hazardous toxic chemicals and
12 were told -- we were not told these rules
13 will not help us. They have left us
14 clean out of this.

15 This book here I have is, this is
16 from an independent investigation of the
17 Portsmouth Gaseous Diffusion Plant.

18 On page 21 and 25 and -- 24 and 25,
19 I am wrote up in this book for having
20 this insoluble high assay Uranium in my
21 body.

22 And I have, I have invivo count
23 papers that tell what my count was or,
24 and now I have a paper that tells what my
25 compensation case when I had it, and they

1 turned me down with it.

2 MR. CARY: Thank you.

3 MS. KIMPAN: Thank you.

4 MR. CARY: The next speaker is Sam
5 Ray. Following him will be Jess Goode.

6 MR. RAY: I would just like to say I
7 have a confusing voice here. Did you
8 understand that? (Reading)

9 "I am Sam Ray, a former enrichment
10 worker at the Portsmouth Gaseous
11 Diffusion plant. I was hired in
12 1954 and worked as a Production
13 Process Operator and Instrument
14 Mechanic.

15 "In May of 1994, I was diagnosed
16 with a rare type of bone cancer:
17 chondrosarcoma. As a result, I had
18 to have my larynx removed. As this
19 point, I had no option but to take a
20 disability retirement. It is well
21 documented that certain Uranium
22 compounds are bone seekers. I might
23 add, I have never smoked a day in my
24 life.

25 "But I am not here today to talk

1 about myself. I am here to express
2 my concern on about the proposed
3 rules that DOE published on
4 September 7th. In my opinion, DOE
5 is trying to circumvent the original
6 intent of the language and in so
7 doing, is making it more difficult
8 for a worker to establish a State
9 claim.

10 "There are many problems in the
11 proposed rules and I realize I do
12 not have time to go into each and
13 every one. I will limit my
14 testimony to one area. That is:
15 What is a toxic substance?

16 "The original language (Section
17 852.2) defines toxic substance as
18 'any material that has the potential
19 to cause illness or death because of
20 its radioactive, chemical or
21 biological nature'. This language
22 should remain as it is. DOE is
23 attempting a campaign to narrow the
24 definition of 'Toxic Substance', and
25 in so doing would eliminate many

1 workers from filing a State claim."

2 And I would like to go back to our
3 public meeting in Denver, Colorado, and
4 at that time, I made the statement, I
5 didn't know whether the DOE's guys was in
6 this or not. Well, when I saw the
7 proposed rules, the thought that came to
8 my mind, maybe they aren't in it, but
9 maybe their lawyers are in it.

10 Now, DOE is going to be very
11 difficult, and at that time, I thought
12 there was a testament made that there
13 would be some binding worker allocation
14 program to assist the workers in nonState
15 claims.

16 And today, I haven't heard a thing
17 on this. And that's basically all I have
18 to say. But I do have to read testimony
19 from a lady that could not be here, a
20 widow. Would that be all right for me to
21 give that testimony or would you --

22 MS. KIMPAN: Do you have any
23 objection? Do you have that written
24 testimony to give to the Court Reporter?

25 Who is the woman, sir?

1 MR. RAY: Hazel Maple. Her husband
2 was a friend of mine, so this is her
3 testimony. She states: (reading)
4 "My name is Hazel Maple. I have
5 asked someone to please read my
6 testimony for me because I cannot
7 speak of my husband without crying.
8 He worked at the Portsmouth Gaseous
9 Diffusion Plant 21 years in Janitor
10 and Shipping & Receiving
11 Classifications. The Shipping &
12 Receiving work was with the Lithium
13 Crew. I am not sure what all he was
14 exposed to because he would not tell
15 me or he did not know.
16 "In 1992, the plant doctor told
17 him his enzymes were high and he
18 needed to see his family physician.
19 The family physician sent us to
20 Columbus. The blood flow to the
21 liver was so great, he had to have
22 surgery. He was eventually
23 diagnosed with cirrhosis of the
24 liver. My husband never smoked or
25 drank a day in his life.

1 "Four years later, the doctors
2 began talking to us about a liver
3 transplant. We waited two more
4 years before he was given a liver
5 from an 18-year-old boy. My husband
6 remained extremely sick, with loss
7 of overall health until he died two
8 and a half years later.

9 "Our expenses were great. His
10 medicine was approximately \$1,500
11 per month. Had we not had the
12 Medicare to pay the first three
13 years of antirejection pills, we
14 would not have made it financially.

15 "We read about the law that was
16 passed to help the workers made ill
17 by the exposures at the plant.
18 Since he was not diagnosed with
19 cancer, I had hoped to be eligible
20 for something with the State
21 compensation, and I would have help
22 from DOE. I cannot begin to say
23 what he was exposed to at the plant
24 or that it made him sick and die at
25 a young age. I need DOE to help me

1 with that, with all of that. They
2 knew my husband's work life better
3 than I did because he protected
4 their secrets at the plant with his
5 life.

6 "I am angry and hurt. I am also
7 alone for the rest of my life. DOE
8 should help us that do not know what
9 to do or how. They should make this
10 easy for me. They owe me."

11 And I guess this is important that I
12 have a hearing -- other diseases which
13 are of an older generation and they need
14 assistance. And in my opinion, what
15 you're doing as far as regulations is
16 denying them benefits. And if I'm wrong,
17 I say that you can hear me. But this is
18 not the final regulation. I think this
19 can go on to 2002, is that right? I
20 predict that it may even get worse.

21 Thank you.

22 MR. CARY: And the next speaker is
23 Jess Goode. Following him will be Lisa
24 Crawford.

25 MR. GOODE: Thank you. I'm here

1 representing Congressman Strickland. He
2 would very much like to be here today,
3 but he's in Washington for votes. I'd
4 also like to add before I leave our
5 statement that we were in contact with
6 both Senator DeWine and Senator
7 Voinovich's office today, and I don't
8 think either of them were able to make
9 it, but they wanted to let everyone know
10 that they were very concerned about these
11 regulations as well and share the
12 concerns that we're going to raise.

13 They -- in fact, I don't believe
14 they were aware of the hearing until we
15 called them, and we were not until the
16 union contacted us. And this is the
17 testimony as follows. Can you get a
18 copy? (Reading)

19 "Thank you for this opportunity to
20 share with you the serious concerns
21 Congressman Strickland has regarding
22 the Department of Energy's proposed
23 regulations issued on September
24 7th, 2001, addressing the
25 Department's position under the

1 Energy Employee's Occupational
2 Illness Compensation Program Act
3 signed into law last fall.

4 "Congressman Strickland has been
5 an advocate for DOE workers made
6 sick by no fault of their own and he
7 continues to work with Senators
8 DeWine and Voinovich to see that
9 this new compensation program
10 functions as Congress envisioned it
11 would.

12 "The September 7, 2001,
13 regulations were required by
14 Congress to assist workers filing
15 claims with State worker
16 compensation programs for illnesses
17 related to their employment in DOE
18 nuclear weapons factories.

19 "Under the law, Congress intended
20 to create a uniform Federal system
21 for Americlass and DOE contractor
22 employees, that includes all
23 subcontractors.

24 "To determine whether a worker's
25 occupational illness arose out of

1 the course of employment and if such
2 a link was found to exist by a
3 Physician's Panel, then the
4 Secretary of Energy would instruct
5 its contractor to refrain from
6 opposing the narrative worker
7 compensation claim.

8 "Congressman Strickland fears that
9 these proposed regulations
10 completely fail to address the
11 desire of Congress to assist workers
12 through a uniform Federal system by
13 imposing numerous obstacles
14 contained in State Workers'
15 Compensation programs. Under the
16 regulations as written, claimants
17 must satisfy State Worker
18 Compensation eligibility criteria
19 before the DOE even refers workers
20 to the Physicians Panel for a
21 medical evaluation.

22 "This thwarts the efforts of
23 Congress to ensure uniformity in
24 this program by layering 50 States'
25 different criteria of how to respond

1 to workers. Under the rule as
2 written, Congressman Strickland
3 questions whether workers filing
4 with their State Compensation
5 Programs will benefit at all from
6 the landmark compensation law signed
7 last year.

8 "The Energy Employees Occupation
9 Illness Compensation Program Act
10 sets up two criteria by which
11 eligibility for compensation should
12 be measured:

13 "1) The application must be filed
14 by or on the behalf of the Federal
15 DOE contractor employee or the
16 employee of State, a State;
17 "2) The illness or death of the
18 Department of Energy contractor
19 employee may have been related to
20 employment at a Department of Energy
21 facility.

22 "Subtitle D of the law discusses
23 further that reasonable evidence
24 exists to link these two eligibility
25 criteria, the Secretary shall submit

1 the application to a Physicians
2 Panel, which would make a medical
3 determination regarding causality.
4 "Using the memorandum of agreement
5 with the States also authorizes
6 Subtitle D of the law to turn this
7 process on its head by requiring
8 claimants to meet State criteria
9 prior to review by a Physicians
10 Panel in all likelihood means few or
11 no workers would receive
12 compensation they couldn't already
13 receive.
14 "We have learned that State
15 compensation programs, as determined
16 by a national economic counsel
17 report last year are not
18 particularly well suited to provide
19 worker compensation for occupational
20 disease because, for example, the
21 State's laws differ on statutes of
22 limitations and establish varying
23 burdens of proof with respect to
24 causation.
25 "Again, this report illustrates

1 the need for a uniform Federal
2 standard given the potentially broad
3 range of State eligibility criteria
4 that are crosswise with the
5 Congressional intent to create a
6 uniform Federal program.

7 "Ohio's Bureau of Workers'
8 Compensation stated at a management
9 team Senate Health Education Labor
10 and Pension hearing that, quote,
11 'While we believe that Workers'
12 Compensation should, without a
13 doubt, be regulated at the State
14 level, this specific instance could
15 benefit from Federal assistance.'

16 "Congressman Strickland believes
17 that the testimony from Ohio's
18 Workers' Compensation Bureau
19 supports the intent of Congress to
20 establish a uniform Federal program
21 by discussing unique circumstances
22 surrounding this program that make
23 it nearly impossible for an employee
24 to make his or her way through a
25 State system.

1 "Congressman Strickland strongly
2 urges the Department to reconsider
3 its proposed approach to assist sick
4 workers in receiving compensation
5 through State programs, and issue a
6 program that comports with the
7 Congressional intent to create an
8 efficient, uniform, and adequate
9 compensation system."

10 MR. CARY: The next speaker is Lisa
11 Crawford. Following her is Vernon
12 Kittle.

13 MS. KIMPAN: Do you have an extra
14 copy?

15 MS. CRAWFORD: Yes. I actually have
16 five.

17 MS. KIMPAN: Okay.

18 MS. CRAWFORD: That's all you're
19 going to get because of the late notice.

20 MS. KIMPAN: That's just fine.

21 MS. CRAWFORD: Before I read my
22 testimony, I just -- I'm going to lodge a
23 complaint here, the same one I lodged on
24 an answering machine at DOE headquarters
25 and then talked to somebody in person

1 this morning.

2 We found out about this hearing the
3 night before last. That doesn't give you
4 a lot of time to do the research and put
5 some good testimony together.

6 So what you're probably going to
7 hear from some of us is a repeat of
8 things we've pulled from hither and yon
9 to pull this together today.

10 As a person who works very hard on
11 public participation within the Fernald
12 facility, you know, two days notice for a
13 public hearing is pretty sorry. I just
14 want that on the record.

15 (Reading)

16 "My name is Lisa Crawford. I'm
17 the president of F.R.E.S.H. (Fernald
18 Residents for Environmental Safety &
19 Health). F.R.E.S.H. has been a
20 watchdog organization of the Fernald
21 facility for 17 years. We continue
22 to be good public participants of
23 the cleanup process, but also of
24 true and fair treatment of the
25 facility's workforce, both current

1 and former. We offer the following
2 comments on the 'Energy Employees
3 Occupational Illness Compensation
4 Program Act' established in the year
5 2000.

6 "Last year, after decades of
7 adamant denial, the U.S. government
8 made a historic acknowledgement: it
9 had put more that 600,000 people who
10 worked in its nuclear weapons
11 facilities and programs in harm's
12 way, and, as a result, made many,
13 many people sick. Subsequent
14 legislation gave some workers with
15 certain diseases the right to apply
16 for compensation or medical
17 treatment. It was the most dramatic
18 about-face to ever happen in the
19 nuclear industry.

20 Since 1942, nuclear workers
21 have worked in many facilities
22 across the country. Some workers in
23 some plants suffered radiation doses
24 so huge that they were 'death
25 sentences'. Such workers most

1 probably suffered severe kidney
2 damage well before they got cancer,
3 and no dialysis was available to
4 them. There is clear evidence that
5 the safety standards of the time
6 were violated and the government and
7 its contractors colluded to keep
8 that knowledge from the workers.
9 "Now, although it took a lot of
10 courage to make the historic
11 admission of wrongdoing, the U.S.
12 government may squander the goodwill
13 and trust that could accrue from the
14 compensation program. The devil,
15 ladies and gentlemen, as usual, is
16 in the details.
17 "Apart from four facilities (the
18 three Uranium enrichment plants in
19 Tennessee, Kentucky, and Ohio, and
20 one test site in Alaska), workers
21 will not be given the benefit of the
22 doubt if they get one of the cancers
23 listed in the law. Instead, they
24 will have to prove that their
25 radiation doses were more than

1 likely not the cause of the listed
2 cancer. For many or most of the
3 workers, this is likely an
4 impossible task through no fault of
5 their own. Worker dose records at
6 many of these plants are incomplete
7 and in many cases, shockingly
8 deficient. In some cases, they may
9 be fraudulent, being tainted by data
10 fabrication. The dose estimates
11 resulting from such records will
12 have huge uncertainties and may
13 remain scientifically undefensible.

14 "Sloppy and incompetent science on
15 health and environmental issues was
16 routine throughout most of the
17 history of nuclear weapons
18 production. For instance, the
19 Department of Energy has admitted
20 that, until 1989, no effort was made
21 to calculate internal radiation
22 doses to workers arising from the
23 inhalation or ingestion of
24 radioactive materials. At the
25 Fernald plant, located -- I have to

1 remind you -- less than 20 miles
2 from where we sit tonight, where
3 Uranium for Plutonium production
4 reactors was processed, most workers
5 in the 1950s and early 1960s were
6 overexposed due to Uranium
7 inhalation, with about 90% being
8 overexposed in 1955.

9 "The pattern of keeping health and
10 environmental abuses about their own
11 people (whether it's workers or
12 community folks) secret in the name
13 of 'national security' in
14 fundamentally 'WRONG' and
15 antidemocratic. It presumes that
16 the people, again, whether they are
17 workers or community folks, would
18 not make sacrifices for the security
19 of their country. It also presumes
20 that top nuclear bureaucrats can
21 make life and death decisions in
22 defiance of established laws, norms
23 and regulations without the informed
24 consent of the people.

25 "It is very clear to us that all

1 nuclear weapons workers should be
2 given the benefit of the doubt and
3 compensated! Many are sick now and
4 don't have time to wait for
5 bureaucratic procedures to see if
6 their radiation doses can be
7 reconstructed. For large numbers of
8 workers, the poor state of the
9 records makes it very unlikely that
10 even a long, expensive process would
11 result in accurate dose estimates.

12 It is unfair and unjust to impose
13 the burden of proof on workers now,
14 when the government did not do its
15 job well then.

16 "The government should assume the
17 burden of proof. This would help
18 redress some of the harm and set a
19 standard that other nuclear weapons
20 States would do well to follow. The
21 United States should not fitter away
22 an historic opportunity for
23 expanding justice and democracy by
24 example."

25 And I add these comments to that:

1 (reading)

2 "First, it is crucial to
3 distinguish what Congress did not
4 do. Congress did not give DOE the
5 specific statutory authority to
6 interpret the standards of up to 50
7 different State Workers'
8 Compensation systems. Nor did
9 Congress give the DOE the legal
10 authority to condition the
11 Physicians Panel's review upon the
12 Federal agency's interpretation of
13 State law. Furthermore, DOE does
14 not have any legislative direction
15 from Congress to use Memorandum of
16 Agreements to impose State criteria
17 as a prerequisite to submitting a
18 claim to a Physicians Panel or to
19 impose State criteria for
20 occupational causality on the
21 Physicians Panel. In fact, the DOE
22 proposed rule defies congressional
23 intents by imposing numerous
24 obstacles contained in State
25 Workers' Compensation programs that

1 Congress sought to circumvent
2 through the Federal assistance
3 program in Subtitle D of EEOICPA.
4 The way to rectify the screwed-up
5 Physicians Panel is to have
6 Congress add clarifying language to
7 an already very clear statute.

8 "The Bureau of Workers'
9 Compensation for the State of Ohio
10 stated at a May 15th Senate HELP
11 Committee hearing that, quote,
12 'while we believe Workers'
13 Compensation should, without a
14 doubt, be regarded at the State
15 level, this specific instance could
16 benefit from Federal assistance.'

17 "Senator George Voinovich stated
18 to a panel on the House Judiciary
19 Committee during a hearing on
20 September 21st, 2000, that, quote,
21 'many of these workers have tried to
22 seek restitution through their State
23 Bureaus of Workers' Compensation.
24 Unfortunately, the vast majority of
25 these claims have been denied . . .

1 denied because State Bureaus of
2 Workers' Compensation do not have
3 the facilities and/or the resources
4 to adequately respond to the
5 occupational illnesses unique to our
6 defense establishment.'

7 "Congressman Mark Udall also
8 referred to the need for an
9 'efficient, uniform and adequate
10 system of compensation' in his
11 testimony before the Judiciary
12 Panel.

13 "Congresswoman Marcy Kaptur of
14 Ohio stated, quote, 'the only
15 practical compensation program for
16 these workers is a Federal program.
17 The numerous differences between
18 State compensation programs would
19 result in an inequitable treatment
20 of workers in similar situations.

21 For fairness' sake, a Federal
22 Workers' Compensation program for
23 these workers is imperative.' She
24 goes on to state: 'the workers
25 suffering from these diseases are a

1 Federal responsibility. They worked
2 in our national defense industry.
3 They suffer because of that work
4 . . . These Cold War heroes deserve
5 to be compensated for their
6 suffering and their loss, and they
7 should be compensated equitably.
8 That cannot be done if their
9 compensation is determined under 50
10 different State laws. Equity
11 demands Federal jurisdiction.'

12 "Beyond statement at hearings, the
13 'Findings' section of the EEOICPA
14 points to the fact that 'State
15 Workers' Compensation programs do
16 not provide a uniform means of
17 ensuring adequate compensation.'

18 The law's 'Findings' go on to state
19 that considering 'fairness and
20 equity' the government should have
21 an 'efficient, uniform and adequate
22 compensation' system. The 'purpose'
23 section of Section 3611 of the Act
24 restate that position, again
25 emphasizing that the compensation

1 program is to the 'timely, uniform,
2 and adequate'.

3 "Also, we strongly differ with the
4 DOE proposal to substitute State-
5 based criteria for the Physicians
6 Panel to use in establishing
7 causality. The judgment of
8 causality is a medical
9 determination, not a legal
10 determination. The medical,
11 toxicological and biological
12 factors will not vary from State to
13 State. Physicians Panels should
14 only base their decisions on
15 medically relevant factors, not
16 legal or administrative inventions.

17 "Final recommendations:

18 "We recommend that the Program
19 Office only require proof of
20 employment as a prerequisite for
21 Physicians Panel review when an
22 employee alleges that the illness
23 arose out of exposure to toxic
24 substances.

25 "We also recommend that the rule

1 adopt a revised standard of
2 causation for occupationally-induced
3 illness. It should state that the
4 Physicians Panel should determine
5 whether the exposures 'contributed,
6 exacerbated, aggravated or caused'
7 the illness or death.

8 "In closing, I must give credit
9 where credit is due. This statement
10 was made possible with the aid of
11 the Institute for Energy &
12 Environmental Research and the
13 Government Accountability Project.
14 Much data and information has been
15 provided through these and many
16 other organizations across the
17 country on this subject.

18 "I thank for the opportunity to
19 speak to you regarding this most
20 important and pressing issue. It is
21 now time for the government to 'do
22 the right thing' and take care of
23 its workers and to begin to think
24 about the community residents who
25 live across the fence line from

1 these nuclear weapons facilities
2 across the country. It is now time
3 for the government to 'come clean'
4 about the contamination and health
5 issues it has imposed on the
6 American public at large.

7 "Again, thank you."

8 MR. CARY: The next speaker is
9 Vernon Kittle, and following him will be
10 Robert Tabor. Hello.

11 MR. KITTLE: I'm Vernon Kittle. I
12 worked at Fernald, went to work at
13 Fernald October the 6th, 1952. I worked
14 in Fluorium, I worked in Uranium, and I
15 worked in Barium.

16 And we cleaned up every month for
17 maintenance -- any time maintenance had a
18 job, we to had clean it, do the dirty
19 work. Clean it up. We didn't have any
20 time limit, but even after we cleaned it
21 up, maintenance had a time limit in
22 there.

23 I went up to New York and helped
24 clean up up at their plant. I was out in
25 New York, the place out there. And I

1 worked all over the plant up there at
2 Fernald.

3 And we've done all the dirty work.
4 I was a Chemical Operator. And that's
5 just about all I've got to say, I guess.
6 I worked all over the place.

7 What? Well, I can't hear you.

8 MS. KIMPAN: You can talk in the
9 mic. You can speak as well.

10 MS. MORITZ: He's also had --

11 MR. KITTLE: Three operations for
12 cancer. Had prostate cancer, colon
13 cancer, and lung cancer. Still hanging
14 in there.

15 MR. CARY: Thank you.

16 MS. KIMPAN: Thank you. Thanks for
17 coming, Vernon.

18 MR. CARY: The next speaker is
19 Robert Tabor. Following him will be
20 Al O'Connor.

21 MR. TABOR: My name's Robert Tabor.
22 I work at the Fernald site. I'm in my
23 21st year there. I'm a member of the
24 Fernald Common Trade & Labor Council,
25 part of that leadership group.

1 I have made a number of trips to
2 different places in the country during
3 the development of this program with
4 respect to the type of people getting
5 together that should know something about
6 what's going on out there and what should
7 this program look like.

8 I made a trip to Denver. I've been
9 to Washington a couple times. And
10 finally now, they've laid out, you know,
11 what the program is, but not what it was
12 supposed to be.

13 And I want to comment to that. One
14 of the things I want to say is, you know,
15 having the Federal Compensation Program
16 for nuclear workers was driven by the
17 fact that Workers' Compensation programs
18 simply don't work. That was the idea of
19 having a Federal program to begin with.

20 The Federal program, the things that
21 were initially proposed in the program:
22 1) was to be more comprehensive, and to
23 include related diseases other than just
24 Barium, other than just Cesium and
25 other than just radiation.

1 I mean, after all, if you stop and
2 think somebody's 20 years old that go to
3 work at a particular nuclear plant in
4 this country, they work there 45 years,
5 now they're 65 years of age, and then
6 suddenly all of a sudden they come down
7 with some terminal illnesses, does it
8 really take a lot of understanding that
9 those illnesses were related to the
10 industry that they worked at, where they
11 worked?

12 You don't need to put the proof of
13 burden on those individuals. In fact,
14 the initial program was designed with the
15 intent of putting the burden of proof on
16 the government rather than how it's been
17 in the past all the time, the burden of
18 proof on the workers. Simply for the
19 simple reason that I just gave.

20 There's many, many cases out here
21 that it's quite obvious that these
22 illnesses and these diseases are related
23 to where they work, and there's no
24 question, you know, about what that is or
25 where that is.

1 So we shouldn't have a lot of
2 complicated processes for all the
3 paperwork.

4 The input and the recommendations
5 for the design of the program, as I said,
6 were not only to include Barium, but
7 were to be more comprehensive.

8 Now, the Energy Employee and
9 Occupational Illness Compensation Program
10 has flat out been watered down, in my
11 opinion. You know, there's some other
12 ways I would describe that, but it
13 wouldn't be appropriate. But watered
14 down seems to meet how I would describe,
15 you know, what I think about the program
16 at this point.

17 I talked to the fact that it should
18 be, the burden of proof should be on the
19 government rather than on the employee,
20 that the design of the program should
21 have been comprehensive and to include,
22 you know, all diseases.

23 A person gets sick from exposure to
24 heavy metals, I mean, and ends up with
25 cancer from exposure to heavy metals, the

1 basic program doesn't cover that.

2 What you're doing here is now
3 bumping all the other things, which will
4 probably be a greater majority of things
5 than what the initial program was laid
6 out, you're bucking it back to the State
7 again.

8 Let me tell you, some of these
9 States don't think they have any
10 liabilities at all. And why is that?
11 It's real simple. The government has
12 been exempt from Workers' Comp. -- I
13 don't mean Workers' Compensation -- but
14 from OSHA's regulations for years.

15 If you're not going to follow the
16 various types of health standards from
17 various other agencies, you know, States
18 are out there paying compensation, but at
19 the same time, they expect industry to be
20 following certain health standards and to
21 be accountable for them.

22 So some States don't feel that they
23 have liability at all to begin with
24 because the government has been exempt
25 all that time.

1 Our Federal government has a
2 liability here for these folks who are
3 sick and have diseases and illnesses,
4 many of which have already died and many
5 of which are currently terminal.

6 And I really believe that, you know,
7 Congressman Strickland, his aide
8 addressed how the Congressman feels about
9 that. That we're going to have a lot of
10 complications if we buck the processes
11 back on to the State systems.

12 I don't know about you folks up
13 here taking this information whether or
14 not any of you have ever been before a
15 State Compensation, you know, Workers'
16 Comp. panel before.

17 I've been there with, you know,
18 there before with many of our employees.
19 You know, I've been there myself.

20 Let me tell you, most of these
21 panels that make the decision as to
22 whether or not your claim is going to be
23 allowed or denied, they're made up of
24 attorneys, white collar workers.

25 They certainly aren't made up of

1 people who have any understanding of ever
2 being out in a real industrial
3 workplace.

4 And they certainly don't know a
5 thing about nuclear industry, let alone
6 very much about physicians decisions.

7 This is the worst thing in the world
8 we could be doing is dumping this stuff
9 back on the States. It's going to
10 complicate the processes. Those types of
11 panels are biasd.

12 You know, the truth of the matter
13 is, you know, we have to be very, very
14 selective about how you're going to take
15 and make these decisions to begin with,
16 as far as what kind of panels you're
17 going to put together relative to the
18 physicians.

19 When it comes to the State type of
20 thing, they are certainly biased and, you
21 know, pro -- I guess I would say
22 management.

23 I know in the State of Ohio, that
24 fund is so huge that the Ohio and State
25 Workers' Compensation could be a

1 stand alone insurance company that could
2 compete with people like Metropolitan and
3 Prudential. That fund is so large. They
4 very rarely pay out, you know, claims
5 that are, should be rightfully
6 considered.

7 And they still continue to charge
8 companies high premiums. So those
9 programs sometimes don't work for either
10 party: the worker or the company.

11 I think I mentioned something about
12 -- let me check from my notes here.

13 I, myself, like Lisa Crawford,
14 didn't have very much, long notice in
15 order to prepare you something to go
16 along with my testimony, so I'm doing
17 this somewhat impromptu.

18 Well, I had enough things concerning
19 the State programs. I just think they're
20 disfunctional for the particular needs
21 that we have here at the Federal level
22 for the nuclear network in those sites
23 and the workers that have worked there.

24 There's way, way too much bias in
25 the State programs, and I believe that

1 they, the Federal government should have
2 some responsibility to administer all of
3 these programs rather than buck these
4 things back off to the State.

5 MR. CARY: Al O'Connor? Following
6 him will be Harry Roederhone.

7 MR. O'CONNOR: Just a couple of
8 things. I'm glad you called me. I've
9 got about 20 years working with the State
10 Workers' Compensation, and I'm telling
11 you right now it will not work. It
12 hasn't worked. As far as occupational
13 diseases, whether it be cancer or any
14 of the other things, all the vital
15 organs, this is a very treacherous
16 industry, and you've exempted yourselves
17 from health and safety, not only at the
18 local and State level, from NIOSH and
19 OSHA.

20 I filed a claim one time to get into
21 Fernald, and the manager said I would
22 never get in there.

23 I went to NIOSH, the health and
24 safety of the whole nation. They said
25 they would, you couldn't get in there.

1 I finally had to go to the
2 Metzenbaum and Senator Glenn before we
3 ever got a hearing or a meeting in there,
4 just a walk around. And that took three
5 years. So I don't think that anything is
6 going to change with this new
7 legislation.

8 And if you're going to have
9 legislation that's going to do any good,
10 it's got to be all one. It can't be
11 State by State with 50 different things.
12 Everybody's said that, but I'm going to
13 say the same thing. It will not work.

14 The State of Ohio, only one-tenth or
15 one percent of occupational disease
16 claims are ever finalized or adjudicated.
17 And most of them the Department of Energy
18 paid all the government contracts across
19 the country from the State of Washington
20 for, as far east, billions of dollars in
21 attorney's fees because they denied every
22 claim there ever was.

23 And I was there, and I happened to
24 be one of the ones that had to take a no.
25 And it would wind up in an attorney's

1 hands.

2 I just made a couple notes here.

3 So then you are finally down to all
4 the people that said, yeah, we're
5 responsible. We ought to do something,
6 but you're not doing enough.

7 Just by saying a few things, I've
8 got cancer of this and cancer of this, it
9 runs the whole gamut. There are people
10 here that have been exposed to chemicals
11 that you've never even heard of, and some
12 of them there's been very little research
13 on.

14 In 1980, we had a meeting down in
15 Oak Ridge where we had the unions from
16 all over the country, and we talked to a
17 girl named, she was, she took over from
18 Dr. Loshby (phonetic). Her name was
19 Shirley Fry (phonetic). She was the head
20 person down there.

21 And so we asked, not just me, but a
22 lot of other people from all over asked
23 for the morbidity studies and mortality
24 studies, and this is over ten years ago.

25 And for 60 years, I can't believe

1 that anybody had done a study to find out
2 what they were using that would hurt the
3 employees.

4 They did nothing. The studies they
5 did were their own, and so they weren't
6 published and they lied about that, too.
7 We got them because someone went down to
8 Chapel Hill in North Carolina.

9 So in the ten years since then,
10 that's 20 years now, those studies,
11 they've got them. I was down in Oak
12 Ridge, Tennessee, because I asked a young
13 lady, it was lunchtime, I got away from
14 the files and another guy, and we asked
15 her where the records were kept because
16 they kept telling us back at Fernald that
17 all of the records was held at Oak Ridge.

18 So we found out, we was in there, I
19 didn't know we weren't supposed to be in
20 there. She showed me, I opened the door,
21 and there wasn't any records. From
22 Fernald or anyplace else.

23 So I told the NIOSH people at the
24 time, I asked them about these studies,
25 and they denied making them, but the

1 doctor's name was on them.

2 We were all sitting at this meeting,
3 and I said: Didn't you just say, no, you
4 didn't do studies? They said: Yes. And
5 I said: Well, they already purged it, so
6 why are you going to listen to what
7 they're going to say?

8 Now, I think everybody in here has
9 been frustrated by years and years and
10 seeing these people dying. It's not a
11 good thing to see when a guy tells you on
12 his deathbed, try to help us, try to help
13 them people.

14 And I've been doing that a good many
15 years, and I'm still -- I've got to step
16 back.

17 But if you think the State Board or
18 whatever -- it's not going to work. I'm
19 telling you right out, I'm telling you
20 from my whole life experience, it's not
21 going to work.

22 It can't go 50 different ways. It's
23 got to go back on to the Federal, and
24 they've got to include not just a few
25 things they put in this legislation we

1 got -- although it's something. But it
2 ain't even, they don't even scratch the
3 surface.

4 And I talked to some people today.

5 One of the guy's wife that she, her
6 husband died. It's one of the cases
7 we've got on, but then he died, and we
8 had to file for the wife. It took almost
9 ten years to get that case a lawyer.

10 And it was one of the common
11 diseases for all the industry, the
12 nuclear industry anyway, and some of the
13 other ones.

14 But after 60 years of this, it's
15 time the government did something for all
16 the people that they shouldn't have been
17 killing them all these years. They
18 shouldn't have been getting diseases and
19 sent out to pasture, some with no
20 insurance, some with no jobs, some
21 disabled for the rest of our lives.

22 And you don't want to just
23 compensate the widows. You should
24 compensate the children as well because
25 they didn't get, probably couldn't get a

1 college education, did a lot without
2 their parents and a lot in their whole
3 life because he got sick working at one
4 of your facilities.

5 And I took in many hearings, NIOSH
6 and OSHA, the both of them. They put out
7 a bulletin, and it was pretty good, all
8 of the chemicals: Uranium, Thorium,
9 Plutonium. You couldn't even -- you've
10 probably all been told 20,000 more
11 chemicals.

12 But it starts off at what the
13 disease is -- I mean, what the chemical
14 is and it goes across the page and it
15 tells you what the permissible limits are
16 and the whole thing, and then it says the
17 target office.

18 Well, how many times those two
19 Federal agencies that put out this manual
20 at the great expense of everybody in the
21 United States, but they made any, never
22 paid one bit of attention to any Workers'
23 Compensation case I ever had.

24 So unfortunately, we've got a
25 couple. But most of the ones that filed

1 claims for died before the cases were
2 judicated, and by God, their kids suffer
3 as a result of it, and they should be
4 compensated.

5 It should be part of the legacy that
6 a guy leaves, and he gives his life. He
7 ought to be able to compensate his
8 relatives, not just his wife.

9 And you're not going to do it
10 through the State, I'll tell you that. I
11 could talk for all the time I spent on
12 this, all night, but I will only for one
13 -- I want somebody else to have a chance
14 to talk.

15 So I'll just tell you that I
16 couldn't be more emphatic. Going with
17 the State is not going to work, period.

18 You should open up more of these
19 places across the country. I've just got
20 one last thing to say, and then I'll shut
21 up and get out of here.

22 I worked at General Electric
23 Company. And there was one article in
24 the paper, I think it was put out by
25 Larry Pug (phonetic), he's the one in the

1 area that helps you fill out the claims
2 -- there wasn't one word about General
3 Electric.

4 Now, they made an atomic reactor.
5 They also made an engine. Well, the one
6 pilot plant was not union. That could be
7 the reactor problem. But it was called
8 atomic nuclear propulsion. Not one word
9 in the paper. If people don't hear about
10 these places, and General Electric also
11 built a test cell called the X-211 cell,
12 and people built on, worked on that
13 engine that was run by fuel or atomic
14 energy reactor.

15 And I, the reason I know they tested
16 it at this test cell is you can run an
17 atomic, or an engine, jet engine with
18 just fuel.

19 But we had to put six three-inch
20 heat exchangers on the engine. But it
21 fed the reactor, but they had to cool the
22 reactor, but nobody told nobody anything.
23 We didn't read, wear badges.

24 So when they put the engine in, I
25 think it's a 60 to 70, the reactor, and

1 the Department of Energy was supposed to
2 decontaminate that building. Well, I was
3 one of the guys that went over there and
4 worked.

5 And the first day I went to NIOSH,
6 they've got their Geiger counter. He
7 found 350 places I had -- it was not
8 decontaminated. They had to shut it
9 down, bring them back. And nobody told
10 me where they were going to put the scrap
11 from that. Probably some waste dump and
12 didn't tell anybody.

13 But anyway, this job, gone on about
14 ten years. They tore that building down,
15 and the building was made out of 18
16 inches of concrete with one and a half
17 inches rebar rods in. They knocked it
18 all in, filled it up with concrete and
19 put dirt over it.

20 Now, they tell me, because I haven't
21 been out there to see it, but when it
22 snows, the snow won't stay on that
23 ground. It's too hot.

24 So we worked in there. All of us
25 poor people that worked in there would

1 never file a claim. Even if they could,
2 I knew it, but you've got to spin what
3 you've got in this bill, it just don't
4 cover, it just don't even cover the
5 illnesses, do justice to the people and
6 to do justice to yourself.

7 I mean, the DOE don't have a license
8 to kill, but they had it for all of these
9 years as far as I'm concerned.

10 And I didn't appreciate it then, and
11 I don't appreciate it now. And I think
12 this legislation just isn't what it
13 should be.

14 Thank you.

15 MR. CARY: Before you start,
16 following him will be Phillip Foley.

17 MR. ROEDERHONE: My name is Harry
18 Roederhone. I represent the Cincinnati
19 AFLCIO. The AFLCIO in Cincinnati
20 represents 125 unions, 90,000 workers.

21 These workers have been employed at
22 Fernald, at General Electric, in the
23 building trade, and in the factories
24 covered by this program.

25 In regard to the Energy Employees

1 Occupational Illness Program Act of 2000,
2 the Cincinnati AFLCIO maintains that the
3 Congressional intent was to assist
4 workers who were exposed to toxic illness
5 as a result of work performed in relation
6 to the efforts of the Department of
7 Energy.

8 The rules which are proposed go to
9 the administration of this Act seem to go
10 directly counter to the Congressional
11 intent.

12 The legislation directs the
13 Department of Energy apply for Workers'
14 Compensation, and that such workers'
15 records would be reviewed by an
16 independent panel of physicians to
17 determine whether the workers' illness
18 met the criteria based upon an employment
19 at an Energy Department facility.

20 It also states that the DOE must
21 assist the applicant in filing the claim
22 and direct his contractor not to contest
23 the claim if a panel finds a related
24 illness.

25 No one disagrees with these

1 statements.

2 Where the disagreement occurs is at
3 the point of who is responsible for the
4 claim.

5 If the intent of Congress was to
6 assist workers in filing and obtaining
7 Workers' Compensation, then the idea that
8 the individual States would handle each
9 of those claims makes very little sense.

10 Subpart D of this legislation makes
11 it quite clear that Congress intended to
12 make such claims easier for workers.

13 Because of the nature of toxic illnesses,
14 Workers' Compensation can often be
15 difficult to obtain.

16 Toxic illnesses don't conform to the
17 timeliness standards of many Workers'
18 Compensation requirements and
19 regulations.

20 In fact, DOE asked for comment about
21 timelessness specifically when this
22 legislation was first being reviewed.

23 If this legislation was meant to be
24 handled by local Workers' Compensation
25 systems and to be billed to the

1 employer's insurance systems, then what
2 is the purpose of the legislation?

3 That's already possible.

4 Such an interpretation means that a
5 worker who has a toxic illness must
6 undergo a more specific application
7 process than a worker with any other
8 work-related illness or injury.

9 We believe that the Department of
10 Energy missed the mark with these
11 proposed guidelines.

12 It is our view that Congress enacted
13 this legislation and the provisions of
14 Subpart D to provide a pathway for the
15 ill workers to obtain relief under their
16 State Workers' Compensation systems.

17 The rules proposed by DOL do nothing
18 but erect multiple, additional barriers
19 to these victims.

20 State agreements must contain at
21 least two provisions: The agreements
22 must provide for Federal standards to be
23 applied in determining eligibility and
24 causality. And they must provide for the
25 reimbursement or indemnification to

1 contractors or insurers, carriers,
2 insurance carriers for claims accepted
3 under Subtitle D.

4 Congress intended these rules to be
5 a relatively and simple and
6 straightforward way for the Department of
7 Energy to assist workers in obtaining
8 benefits under their State Workers'
9 Compensation programs by providing a
10 mechanism for determining whether the
11 illness arose out of employment, and then
12 authorizing DOE to pay the claim through
13 a mechanism whereby DOE would instruct
14 the contractor not to defend the claim in
15 the State system, setting the stage for
16 the employer to bill the cost of that
17 claim back to DOE.

18 We ask that the rules, as proposed,
19 be reviewed and revised to reflect the
20 intent of Congress. Thank you.

21 MR. CARY: Phillip Foley? Following
22 Phillip will be Carl Hartley.

23 MR. FOLEY: I'm Phillip Foley. I've
24 worked at the Paducah Gaseous Diffusion
25 Plant for 26 years. And I've worked as

1 a laborer and electrician. For the last
2 two and a half years, I've also been
3 involved in the worker health and
4 protection program, which cases where
5 I've been the local coordinator of that.

6 While I've been employed at Paducah,
7 I've been exposed to radiation, Uranium,
8 Asbestos, Chloride solvents, and as Jeff
9 mentioned earlier, noise.

10 They -- very likely I've been
11 exposed to Barium, Plutonium and many
12 other chemicals and hazards in the
13 workplace.

14 While not being an expert on
15 Workers' Compensation, I don't know of
16 any Paducah employee who's been
17 compensated through our State program for
18 an occupational disease.

19 They participated in our first
20 worker health protection workshop in
21 April of 1999, and in these past two and
22 a half years, I've had the privilege of
23 talking to many workers, many sick
24 workers, and many of these workers do not
25 have life-threatening diseases, but it's

1 very likely that their problems were
2 caused from an exposure they endured at
3 the plant.

4 No program that I'm aware of has
5 even considered hearing loss, although
6 our workers' health study has shown that
7 75% of the employees at the plant suffer
8 from hearing loss, some very severe.

9 The gaseous diffusion process uses
10 large compressors turned by 3,000 horse
11 power motors.

12 The one particular building that I
13 work in has 480 of these things. There
14 is a tremendous amount of noise involved.

15 We also have many diagnosed cases of
16 asbestos scarring. No one other than the
17 manufacturers of the asbestos have ever
18 been held liable for asbestos exposure.

19 The, now due to the bankruptcy of
20 these manufacturers, this source of help
21 for employees is drying up. And most of
22 the people who were getting some
23 compensation, that's gone.

24 Many of the people that I've talked
25 to, the compensation they were awarded

1 was not even enough through the years to
2 pay for a funeral.

3 The asbestos was used in many places
4 at Paducah. As a table splicer, I ground
5 it on the transit pipe, which is
6 Asbestos. Asbestos was used in pipe
7 insulation, and even in the siding on our
8 building is asbestos.

9 If time would permit, I could give
10 many more instances of diseases, such as
11 neuropsy, skin problems, breathing
12 problems, and even diabetes.

13 But let me personalize this a
14 little. Mr. Harold Mallory began working
15 at Paducah in 1973. About 22, 23 years
16 old, worked as a maintenance mechanic.

17 He worked in C-420, C-340, Cascade
18 building, worked shift work, builder
19 hauling and repair. In many cases,
20 respiratory protection he needed was a
21 rag held over his nose.

22 The -- in 1975, at 25 years of age,
23 Harold developed a tumor in his right
24 lung about the size of his fist. It was
25 removed surgically, sent to Louisville to

1 a lab. They sent it back -- couldn't
2 determine what it was. And then it was
3 sent -- he wasn't real sure, but it was
4 sent to Washington D.C. to another lab.

5 After being told it was lost and
6 jumping a few hurdles along the way, he
7 finally found out they couldn't determine
8 what it was either.

9 Most of Harold's right lung was
10 removed, and the scar tissue from that
11 has cut off his blood supply so he only
12 has one lung now.

13 He's been told he doesn't qualify
14 under the Energy Employee's Occupational
15 Illness Compensation Program Act because
16 he's never been diagnosed with cancer.

17 But he's missed most of the
18 activities that a father would
19 participate in with your children growing
20 up. He's 49 years old right now. And as
21 his children grew up, he was unable to
22 play ball with them and do other things
23 that other dads did.

24 He can't even walk up a flight of
25 stairs without stopping to rest, catch

1 his breath.

2 And now, in response to these
3 proposed rules, still to follow the
4 guidelines of environment, Energy
5 Employees Occupational Illness
6 Compensation Program Act, setting up a
7 program that would make it easier for
8 affected workers to file claims under the
9 State Workers' Comp. law, the DOE has
10 proposed rules to set up another layer of
11 bureaucracy.

12 In August 19th, 1999, then Secretary
13 of Energy, Bill Richardson, told a group
14 at Paducah that the burden of proof
15 should be on the government. We
16 shouldn't have to prove that we were
17 exposed. Secretary Richardson also said
18 we were not informed we were exposed. He
19 was well aware of this.

20 Now, after many empty promises from
21 DOE, we found more hurdles that we're
22 required to jump. We're told that the
23 Physicians Panels will be used to
24 determine causation and exposure, using
25 data that's nowhere to be found in most

1 cases.

2 What there is available is very
3 unreliable. Chemical exposure data at
4 Paducah is almost nonexistent. Most of
5 the information gathered by our worker
6 health programs came from sessions
7 directed by Mark Grithin (phonetic) and
8 worker investigators from our side.

9 Knowledge of former workers have
10 been invaluable in determining where
11 exposures occurred, what chemicals were
12 used, and who was exposed.

13 We've only scratched the surface
14 with sketchy data, 50-year-old exposures,
15 and very little cooperation from DOE.

16 The use of worker investigators and
17 the knowledge of both current and former
18 workers will be necessary or will be
19 almost imperative for dose
20 reconstruction.

21 The initial -- this would have to be
22 done in order for people to be helped
23 according to the spirit of the Energy
24 Employee's Occupational Illness and
25 Compensation Program Act.

1 DOE has promised that they'll issue
2 orders to contractors not to fight
3 claims. Well, the intent of this is
4 good, but USEC is not a contractor for
5 the Department of Energy, so where does
6 that leave Paducah to enforce? Not going
7 to be much help for us there.

8 Since DOE has placed itself in the
9 position of determining which claims will
10 go to the Panel, seems to me like we're
11 letting the fox guard the hen house.

12 We haven't had a good record of
13 telling us, yeah, we did it. So I really
14 can't see a lot of difference in the
15 current Anthrax scare we have in our
16 country and the way DOE placed Cold War
17 Veterans in harm's way by exposing them
18 to many hazards in the workplace.

19 You know, we kind of receive an
20 envelope every day full of hazards, but
21 we didn't know what they were, and we
22 didn't have a powder that came out at us.

23 A lot of times we couldn't see it,
24 or smell it, or taste it, but it was
25 there.

1 In closing, all we're really asking
2 today is to be treated fair. Don't
3 enforce these rules you proposed. It
4 would just be another bottleneck for an
5 aging population that did their part to
6 keep America free.

7 Don't let Harold and thousands of
8 other Cold War Veterans become just
9 another casualty of the Cold War.

10 Please don't let America's Cold War
11 Veterans, don't leave us out in the cold.
12 Thank you.

13 MR. CARY: Thank you. Carl Hartley?
14 Following Carl is Donna Howard.

15 MR. HARTLEY: (Reading)

16 "My name is Carl Hartley. I was
17 hired at the Portsmouth Gaseous
18 Diffusion Plant in August of 1974
19 as a Uranium material handler. My
20 training consisted of 30 days of
21 classroom training and an additional
22 30 days of on-the-job training.

23 "Some of the jobs I've performed
24 consisted of mixing, weighing, and
25 packaging oxides. Sampling of

1 highly enriched Uranium that was
2 identified as reactor reefered
3 material. It was later determined
4 that this material contained traces
5 of Plutonium.

6 "This material was in a liquid
7 state and it contained different
8 residues that caused the bellows in
9 sampling valves to fail resulting in
10 a release of airborne radioactive
11 contamination. My personal
12 protective equipment consisted of a
13 World War II Army assault mask that
14 was not designed to protect me from
15 exposure to radioactive material.

16 "For many years I have served as a
17 member of the plant emergency
18 response team. Now when I respond
19 to a release of material, I am
20 required to wear a fully
21 encapsulated suit with an air bottle
22 to protect me from unknown hazards.

23 "I am also a former
24 Secretary/Treasurer of the Atomic
25 Energy Workers Council. This is an

1 industry council that was created by
2 the Oil Chemical and Atomic Workers
3 International Union to address
4 issues affecting nuclear workers.
5 During one of the Council's
6 meetings, before this legislation
7 was passed, several legislators and
8 government bureaucrats spoke to the
9 delegates warning us that DOE will
10 require us to produce dose records
11 to win a claim and more likely than
12 not you don't have accurate records.
13 Over the years, our exposure records
14 have been lost, destroyed, altered.
15 Some of our dose-monitoring badges
16 were run through chippers and
17 destroyed.
18 "The legislators' intent was to
19 create a uniform system of
20 compensation and not an
21 administrative nightmare of 50
22 States imposing 50 different
23 interpretations. The 'Cold War
24 Veterans' were working for the
25 Federal government when they were

1 unknowingly exposed and it is the
2 Federal government's responsibility
3 to see that the workers receive a
4 fair and meaningful compensation
5 without trying to reconstruct dose
6 records that do not exist. It can
7 be as simple as DOE directing the
8 contractors to pay these claims.
9 Many of these workers will die while
10 their claim is being screened panel
11 to panel. I encourage the
12 Department of Energy to comply with
13 the original intent of the workers'
14 health care legislation to ease the
15 suffering of these heroes and their
16 families. Being an employee at one
17 of these former nuclear defense
18 sites should be sufficient proof for
19 any claim."

20 Thank you.

21 MS. KIMPAN: Carl, you don't say in
22 here, but for the record, tell us where
23 you work.

24 MR. HARTLEY: Portsmouth.

25 MS. KIMPAN: Where?

1 MR. HARTLEY: Portsmouth. I said
2 that in the beginning.

3 MS. KIMPAN: I'm sorry. I only saw
4 the written part.

5 MR. HARTLEY: But you're right. I
6 omitted it.

7 MS. KIMPAN: I just wanted to make
8 sure.

9 MR. CARY: Following Donna will be
10 Carl Mullens.

11 MS. HOWARD: You know, this whole
12 thing is new for me, and I didn't expect
13 it to be so emotional, so I asked Mark to
14 read it for me.

15 MS. KIMPAN: That's fine. That's
16 fine.

17 MR. LEWIS: It's a pleasure and
18 privilege, Donna, to read this for you.

19 (Reading)

20 "My name is Donna J. Howard. I
21 work at the Portsmouth Gaseous
22 Diffusion Plant. I have been a
23 Uranium material handler for 12
24 years. I have been exposed to
25 Uranium Hexafluoride, Fluorine,

1 HydroFlouride, Technetium,
2 ChlorineTriFluoride, PCB, Asbestos,
3 Hydrogen, Fiberglass, Arsenic, Alpha
4 contamination, Ammonia, Alpha, Beta,
5 and Gamma radiation, and excessive
6 heat and noise.

7 "When I came to work at the
8 facility, I was thrilled because I
9 had to make a living for my family,
10 and this was the best-paying job in
11 my area. As soon as I began my
12 training for the job, I realized the
13 risks I was taking, and me and my
14 fellow workers said we should
15 receive hazardous duty pay because
16 of all the hazards we were exposed
17 to.

18 "When I began working at
19 Portsmouth, I had perfect eyesight.
20 Now I wear bifocals. Plant training
21 tells me Gamma and Beta radiation is
22 particularly damaging to the eyes.

23 "I have been denied the right to
24 raise my life insurance policy
25 because my liver enzymes are ten

1 times normal. My annual physical at
2 the plant has indicated these for
3 the last five years. I have seen a
4 liver specialist, and he can no
5 longer account for my increase.
6 Also, I have talked to several
7 fellow workers who say their enzymes
8 are also elevated. The only thing
9 we have in common is the place we
10 work.
11 "I have pretty much resigned
12 myself to the fact that I will
13 develop cancer. I am just waiting
14 to see where it will show up and
15 when. I have watched many of my
16 fellow workers, some I have worked
17 with side by side, who have fallen
18 ill and died from cancer. I just
19 think to myself, I'm next.
20 "It appears to me that I can
21 expect no help for me or my family
22 in getting State Workers'
23 Compensation for all the years and
24 all the things that I've been
25 exposed to. Until now, I've worked

1 under the assumption that DOE has
2 been looking out for the workers in
3 hazardous areas. I am truly
4 disappointed in this proposed rule."

5 Donna J. Howard.

6 MR. CARY: Carl Mullens is the next
7 speaker. He'll be followed by Mark
8 Lewis.

9 MR. MULLENS: (Reading)

10 "My name is Carl Mullens. I've
11 worked at the Portsmouth Gaseous
12 Diffusion Plant for 26, almost 26
13 years. I worked as a Chemical
14 Operator for most of the years and
15 worked -- I now work as a Janitor.
16 Even as a Janitor, I have numerous
17 restrictions that limits my job. I
18 also, I'm also no longer a Chemical
19 Operator because I cannot wear a
20 respirator. My health is in very
21 poor condition.

22 "On January 27, 1995, a coworker,
23 Ron Hurley and I were involved in a
24 fluorine release. I was in the
25 X-342 building when an alarm

1 sounded. I responded like I was
2 told to and trained to do. The
3 procedure that I was required to
4 follow directed me to unknowingly
5 enter the release area where I was
6 unknowingly, unknown concentrations
7 of fluorine and hydrofluoric acid.
8 We were taken to the plant hospital
9 and examined by the plant medical
10 doctor. The plant manager directed
11 us to return to our job. The
12 sampling that was done a half an
13 hour later indicated levels of
14 hydrofluoric acid that was
15 immediately dangerous to life and
16 health. I found out later the plant
17 doctor noted in my medical records
18 that we could have been, we could
19 have had fluorine poisoning. I also
20 found out the reason for the release
21 was the valves that were being used
22 in the facility were inferior to
23 what was used to be used. There was
24 no testing, which was required to be
25 done to ensure those types of valves

1 were adequate to be used. In fact,
2 the company knew the valves would
3 be more likely to fail than the
4 previous ones.

5 "Within a few days after the
6 accident, I started having joint
7 pain and swelling. I went to the
8 emergency room where an emergency
9 room doctor called the poison
10 control center. The doctor at the
11 hospital then advised me to change
12 jobs.

13 "I filed for Workers'
14 Compensation, and it was lost after
15 the appeals process. The company
16 had attorneys present for them
17 during my case. During my hearings,
18 the company representative said,
19 'Flourine. That's what they put in
20 toothpaste. It wouldn't hurt you.'

21 "As long -- along with fluorine
22 and hydrofluoride, I have been
23 exposed to unknown levels of
24 radiation, hazardous solvents, PCBs,
25 Lead, Arsenic, Nitric Acid, Sulfuric

1 Acid, and Nickel, Argon Gas, Chromic
2 Acid, along with many other
3 substances I don't know.

4 "Since my injury, there has been
5 many efforts to remove me from my
6 job. Even to the point of forcing
7 me into disabled retirement.

8 "The fluorine and hydrofluoric
9 acid burned my sinuses and my lungs.

10 I had hoped the Department of Energy
11 would take care of me because they
12 admitted the exposures to me and
13 other workers and did not monitor
14 the proper, us properly throughout
15 our work life at the plant. It
16 looks like they have now decided to
17 ignore their responsibility by law
18 to assist sick claims that really
19 are just hoaxes on the sick workers.

20 Thank you very much for your time."

21 MR. CARY: Mark Lewis will be
22 followed by Ralph Gray.

23 MR. LEWIS: Hi. I welcome the
24 opportunity to speak on this Workers'
25 Compensation. (Reading)

1 "My name is Mark Lewis. I am the
2 coordinator for the Worker Health
3 Protection for the Portsmouth
4 Gaseous Diffusion Plant in southern
5 Ohio.

6 "From the earliest days of the
7 nuclear weapons program, health and
8 safety issues were secondary
9 concerns. Production and secrecy
10 were the main concerns. There have
11 been many studies in the areas of
12 worker and environmental exposure.
13 These studies were closely held and
14 highly classified, partly because
15 they revealed secrets about weapons
16 work, but the most basic issue was
17 the government's potential liability
18 for health and environmental
19 problems. This could result in an
20 increase in insurance and worker
21 compensation claims, not to mention
22 increased difficulty in labor
23 relations and adverse public
24 sentiment. DOE and their
25 contractors fought workers health

1 claims with everything at their
2 disposal.
3 "In 1993, Congress passed a law
4 (as part of the 1993 Defense
5 Reauthorization Act) that required
6 DOE to set aside funds for programs
7 that would elevate the health of
8 their former workers and, excuse me,
9 evaluate the health of their former
10 workers. The labor union PACE
11 (which includes the former OCAW
12 or Oil, Chemical & Atomic Workers
13 Union that represents many of the
14 workers at these DOE facilities)
15 joined with two universities --
16 Queens College of the City of New
17 York and the University of
18 Massachusetts at Lowell -- to design
19 and offer this Program (3161) of the
20 Defense Reprostation (phonetic) Bill.

21 "As a result of the structure of
22 the program (worker involvement)
23 public meetings were held at Gaseous
24 Diffusion sites and laid the
25 foundation for a worker compensation

1 program. At first, administration
2 fought this program. As the result
3 of Congressional hearings in the
4 Senate and the House, we achieved
5 the 'Energy Employee Occupational
6 Illness Program' title XXXVI.

7 "The President has signed this
8 bill and a local resource, local
9 resource centers are open in various
10 locations in our nation.

11 "This law addresses certain
12 cancers and lung diseases that the
13 Federal program covers. It also
14 directs the Department of Energy to
15 help workers apply for State
16 Workers' Compensation. An
17 independent panel of physicians will
18 review the worker medical records.
19 If the Physicians Panel finds the
20 worker's illness meets criteria
21 based on employment at a DOE site,
22 complying with the law, DOE must
23 help the employee file the claim.
24 DOE may also direct its contractor
25 not to fight the claim. It is my

1 belief that the State of Ohio will
2 fight the claim and most certainly
3 the contractors will fight the
4 claim, considering that many of the
5 contractors are not the prime
6 contractors at the time of the
7 employee's exposure. And, as the
8 case at my site, many are
9 self-insured. The question is, how
10 the affected agencies get their
11 monies back if directed to pay --
12 that is, not fight the claim.

13 "We have achieved something that
14 some people thought was not
15 possible, but most people realize
16 that this law should go even
17 further. It includes most top
18 Congressional leaders. We have just
19 taken the first step in a long and
20 arduous process. We cannot rest on
21 our laurels. We must continue to be
22 proactive in the area of health and
23 safety. We have no other choice.
24 This means demanding that the
25 Department of Energy rewrite these

1 rules so that workers get assistance
2 and not more hurdles in their way.

3 Thank you very much."

4 MR. CARY: Ralph Gray? Ralph will
5 be followed by Lynette Evans.

6 MR. GRAY: I'm Ralph Gray. Retired
7 from Portsmouth Gaseous Diffusion Plant.
8 I worked there for 28 years, seven
9 months, starting in 1954 before the
10 start-up of the plant and retired in,
11 retired on a disability the latter part
12 of November 1982. That comes up to 28
13 years and seven months.

14 I was tested for Asbestos under the
15 screening program at the plant union
16 office. It came up positive. And by
17 this here, I had, I had a large portion
18 of my work involved escorting duties to
19 contractors. Now, this is when I first
20 went out there. I was a Security Guard.
21 We escorted all personnel. The
22 personnel covered all pipes for the gas
23 pipes or water pipes. They were all
24 covered by asbestos. We escorted
25 numerous amount of companies and covered

1 these pipes.

2 A lot of them would be in rooms like
3 the administration building. We would go
4 to work in there, clean uniforms on. At
5 that time, we had to keep our own
6 uniforms clean, and we bought our own
7 uniforms. Well, we never wore a mask or
8 nothing.

9 Here, it's in this small room.

10 They're covering the pipes. The took
11 powdered asbestos and mixed it with
12 water with a paddle in there, stirring it
13 all up with a little electric motor.
14 That stuff gone everywhere. It gets in
15 your nostrils. You blow it out. Nobody
16 said anything.

17 So I worked there at that for
18 several years until they got the ban on
19 steam. (Reading)

20 "A large portion of my work was
21 all escorting duties for
22 subcontractors to work on steam
23 piping at the plant. This piping is
24 throughout plant site. It is
25 covered with asbestos. The

1 contractors took powdered asbestos
2 and mixed it with water to cover hot
3 and cold lines in the entire plant.
4 When this was mixed, we were totally
5 dusted with the Asbestos powder.
6 These uniforms were our
7 responsibility to take home for
8 cleaning. My safety training on the
9 job was none."

10 They just had a -- we would escort the
11 men for eight hours. That was it.

12 "Also as a Guard, my
13 responsibilities in the start-up of
14 the plant was to stand within a
15 release to assure no persons entered
16 the release area due to security
17 measures, not safety measures."

18 Now, to clarify that, one morning I
19 went -- I was always in early. The
20 Lieutenant, he came down from Akron, they
21 worked for Goodyear, and I had a uniform
22 on. This was close to 30 minutes before
23 my work time. He came in and said,
24 "Gray, come with me." I said, "Hey, it's
25 not my shift yet." He said, "It doesn't

1 matter. Come on; go with me."

2 So we went to the X-330 building,
3 and started up 291 there. And as all the
4 other boys know that worked at that time,
5 once you started it up, the pipes were
6 leaking. There was just stuff blowing
7 out everywhere. We went up to the top of
8 the stairs, opened the door. You
9 couldn't see the 20 foot from the stairs
10 over to the cell houses, it was blowing
11 out so bad.

12 He said, "You stand right here.
13 Don't let anybody come up here because
14 this is radioactive." So he turns and
15 runs.

16 So I stand up there looking like a
17 dummy, which I was, breathing all of this
18 stuff. Well, everybody did this. Okay?

19 (Reading)

20 "Equipment was not totally
21 enclosed when cells were placed
22 onstream in the 1950s. In the early
23 '60s, I was in a very bad fluorine
24 release that burned my throat and
25 nostrils."

1 I ended up going to the Cleveland Clinic
2 and they treated me. At that time, they
3 asked me where I worked. The doctor
4 said, "Were you ever in and around any
5 Fluorine?" I said, "I was in a bad
6 Fluorine release." He said, it had burnt
7 your nostrils and your throat. I
8 couldn't taste, couldn't smell. Thought
9 I had a bad cold. This went on for,
10 something like six or eight years before
11 I could ever start tasting or smelling
12 anything again.

13 And, to top that off, I started
14 losing my hair. As you see, I have no
15 hair on my body. No pubic hair, no
16 nothing. I'm like this all over. It's
17 embarrassing. It's not only
18 embarrassing, it gets awful cold on a
19 cold winter night. If you don't have a
20 hat, sometimes your head gets awful cold.

21 But nevertheless, later on I, well,
22 about a year ago, I filed a Workmans'
23 Compensation claim with the Ohio State
24 Compensation Board, and they got all
25 the papers picked up and the Compensation

1 Board at Portsmouth told me to come to
2 Cincinnati here to talk to a Dr. Lackey.

3 Well, he gave me an examination that
4 took about four hours and a half. And at
5 that time, I asked him why would I have
6 no hair on my body. And again it came up
7 Fluorine.

8 He said, "That has burnt the hair
9 follicles or the roots out of your entire
10 body."

11 So that being said, needless to say,
12 he was the only one that they sent me to.
13 He was a doctor for the State
14 Compensation Board, and they turned me
15 down for any claims whatsoever. All
16 right? (Reading)

17 "As a Chemical Operator, my
18 responsibilities were to
19 decontaminate throughout the plant
20 site. We swept and mopped the
21 contaminated areas and buried
22 contaminated waste in the 'hot
23 yard'. The liquid from the cleaning
24 solutions were taken to 'E' area,
25 705 where the Uranium was extracted

1 from the liquid. I was in many,
2 many releases."

3 As a guard, we had to report to
4 every release on the plant site. After I
5 went to the Chemical Operations, I had to
6 go and help clean it up after the fact,
7 so we were in all of them.

8 Back to the Workmans' Compensation.

9 (Reading)

10 "I seen an attorney to assist me,
11 or I had an attorney assist me in
12 filing a State Workers' Compensation
13 claim for Asbestoses. I did not
14 have the proof of how and where I
15 had been exposed or a medical
16 statement relating by the condition
17 to work at that plant."

18 So where else could I have gotten
19 any of this other than the plant? To end
20 this up: (reading)

21 "The Department of Energy
22 apologized for exposing us to the
23 toxic chemicals. They are supposed
24 to help us file and prove our
25 claims."

1 Now, I never heard anybody helping
2 me. I've done it all myself. (Reading)
3 "These rules that the DOE propose
4 will not help us at all. DOE has
5 not been responsible as an employer
6 in the past, and our people thought
7 they would be forced to be
8 responsible by law to help us in
9 these Workers' Compensation cases."
10 Thank you.

11 MR. CARY: The next speaker is
12 Lynette Evans followed by Weston Moore.

13 MS. EVANS: (Reading)

14 "My name is Donna Lynette Evans.
15 I currently work as a Janitor at the
16 Portsmouth Gaseous Diffusion Plant.
17 I've worked at the plant for 27
18 years. I started working at the
19 plant at age 19 in May 1974, as a
20 clerk in the accounting department.
21 I was happy to be working at the
22 A-Plant because it was considered to
23 be one of the best places to work
24 in our area.

25 "I felt a sense of pride working

1 for the national defense of our
2 country. I took the security
3 portion of my job very seriously,
4 and even today it is a little
5 difficult to discuss the exposures I
6 witnessed over the years.

7 "In 1980, I bid to the Janitor
8 Department and one month later I bid
9 to the Chemical Operations
10 department, which was a big increase
11 in pay for me and also a move from
12 being in the office setting to
13 actually working all over plant
14 sites in the decontamination of
15 equipment and piping in the process
16 building and working in the
17 decontamination and chemical
18 cleaning buildings as well.

19 "I was young and ignorant at that
20 time of all the dangers of exposure
21 to the many different cleaning acids
22 and chemicals we used as well as the
23 UF₆ releases, HF fumes, Technetium
24 exposure I received repeatedly while
25 doing my job as a Chemical Operator.

1 "I met my husband, Danny Evans,
2 who is now a retired Chemical
3 Operator, while I was in this
4 department. His story of exposures
5 while working in Oxide conversion
6 section of decontamination (known as
7 E-Area) is even worse than what I
8 experienced. He crawled in process
9 piping that was not properly purged
10 of HF gas and ended up with
11 inch-long blisters on his exposed
12 skin and sore throat from breathing
13 the fumes.

14 "I remember being struck by the
15 number of my female coworkers who
16 had suffered by early hysterectomies
17 from various female reproductive
18 illnesses and cancers. I worked 12
19 years as a Process Operator, and the
20 last seven years in Stores, Waste
21 Handlers and Janitor Departments.

22 "Today, I look back and realize
23 that our training and personal
24 protective equipment was nonexistent
25 to begin with and inadequate for

1 years after, and I have seen too
2 many of my coworkers and friends get
3 sick and suffer from rare cancers or
4 even dead from cancer at too young
5 of an age.

6 "Finally, after public testimony
7 by many of the former workers and
8 their survivors who have been
9 sickened by our work at the plant,
10 our legislators passed a law to
11 compensate these families
12 financially.

13 "Now, however, I understand that
14 these same families who have
15 suffered as a result of their loved
16 ones working in jobs to defend our
17 great nation -- these Cold War
18 Veterans -- are facing a complicated
19 system that is unwilling to assist
20 them in their Workers' Compensation
21 claim filing process.

22 "I understood the intent of the
23 law enacted was to ease the burden
24 of proof and make filing their State
25 claims possible, not do the

1 unthinkable by hindering what these
2 veterans deserve as compensation
3 for their service to this same
4 government.

5 "The Department of Energy must do
6 what they promised and furnish these
7 Cold War Veterans with adequate
8 assistance in filing their State
9 claims along with the Federal
10 claims. Hopefully, my friends will
11 live long enough to see that justice
12 is done in this matter.

13 "God bless them all and thank
14 you."

15 MR. CARY: Thank you very much. As
16 I mentioned earlier, I have to return to
17 Washington, but the hearing will be
18 turned over to Kate Kimpan. We're very
19 interested in your testimony and would be
20 very pleased to hear from you all.

21 The next speaker is Weston Moore.
22 Following him, Dave Simpson.

23 MR. MOORE: Thank you for the
24 opportunity to speak here this evening.

25 MS. KIMPAN: Do you have a copy of

1 your statement, sir?

2 MR. MOORE: It should be over --
3 this is for Gregory Nichols.

4 MS. KIMPAN: Okay. Thank you.

5 MR. MOORE: My name is Weston Moore.
6 I'm a Uranium material handler at the
7 Portsmouth Gaseous Diffusion site in
8 Piketon, Ohio. And Greg Nichols could
9 not be here this evening, so I've been
10 asked to read his statement. And I will
11 do so.

12 And I'm asking that you allow the
13 words that are simply written on paper to
14 leap from the pages and grip your heart,
15 your conscious, and that we will proceed
16 with expeditious claims being filed and
17 taken care of.

18 So I'm going to begin the statement.
19 This is the statement of Gregory W.
20 Nichols. It states: (reading)

21 "My father, Edgar B. Nichols,
22 began working for Goodyear Atomic
23 Corporation in 1954 at the Piketon,
24 Ohio, Enrichment Facility.

25 "In 1962, my father was taken from

1 the facility by ambulance to Pike
2 County Hospital in Waverly, Ohio,
3 where he was treated for several
4 weeks for toxic exposure from a
5 facility mask. This was the
6 beginning of 36 years of never going
7 a day without a headache, due to the
8 irritation caused to the brain and
9 nervous system. He was not released
10 to return to work for three months.

11 "In the late '70s and early '80s,
12 he endured two operations to remove
13 cancerous tumors from the outside of
14 his nose. This left him scarred
15 and in constant fear of a returning
16 tumor. He believed this to be
17 related to his being exposed to
18 toxic chemicals at the Piketon
19 Facility.

20 "Again in 1985, he was diagnosed
21 with prostate cancer and again
22 endured two operations and never
23 fully recovered.

24 "During 1985, he was diagnosed
25 with chronic emphysema and began to

1 lose weight and have difficulty in
2 doing strenuous activities. It was
3 at this time in 1985 that he began
4 to endure several trips to a State
5 Compensation doctor in Columbus,
6 Ohio. The result of these trips
7 would get the doctor to submit that
8 my father was not permanently
9 disabled, but had a temporary total
10 disability, and the process would
11 start all over again in six months
12 as the benefits would then stop.

13 "In the three-year period between
14 1987 and his death from Chronic Lung
15 Disorder in March of 1990, he would
16 not be able to drive himself to the
17 Columbus appointment and could not
18 be able to walk to the office
19 without the help of a family member.

20 Yet, the State Compensation doctor
21 would only recommend temporary total
22 disability, causing the process to
23 take place approximately every six
24 months.

25 "The last two years of my father's

1 life he was on oxygen and was still
2 only approved for temporary total
3 disability and never permanent total
4 disability. Even as his weight
5 dropped to 100 pounds on his
6 six-foot frame, the doctor never
7 suggested total disability. These
8 five years were very cruel to my
9 father both physically and mentally
10 as he not only worried about being
11 without Workers' Compensation during
12 his lifetime, he was concerned for
13 my mother's survivor benefits.
14 After a total of seven years of
15 Goodyear and Lockheed Martin denying
16 responsibility, a hearing was held
17 in July 1991, one and a half years
18 after my father's death. At this
19 hearing, Lockheed Martin's attorneys
20 agreed with the finding of our legal
21 counsel.
22 "These findings were that my
23 mother -- excuse me. These findings
24 were that my father's condition and
25 ultimate death was attributed to

1 work-related toxic exposure to
2 Nickel Carbonyn, HexiFluoride and
3 Asbestos. My mother was finally
4 awarded the survivor benefit based
5 on total permanent disability.

6 "The award was made retroactive to
7 my father's date of death; however,
8 the attorney's fees were
9 approximately \$10,000. The attorney
10 certainly earned this fee; however,
11 it seems very unfair that an
12 employee or surviving spouse should
13 have to endure the cost and
14 suffering to collect a benefit that
15 should have been already decided
16 upon seven years earlier.

17 "Prior to my father's death, he
18 asked me to pursue this claim as he
19 was certain of his illness being
20 caused by worker-related exposures.

21 "Hopefully, many others with
22 similar situations will not have to
23 suffer for so many years. My father
24 was a six-foot, 154-pound man in
25 1985 and weighed only 88 pounds at

1 his death in 1990."

2 Thank you.

3 MS. KIMPAN: Next is Dave Simpson,

4 and after that, we'll have Garry Sexton.

5 Before you start -- one moment. Is

6 there anybody else, because there are

7 still several people here we have written

8 statements, all of which are absolutely

9 submitted into the record, but if there

10 are others here who would like to speak

11 after Garry Sexton, please see Jeff over

12 by the door --

13 MR. EAGAN: Or just raise your hand.

14 MS. KIMPAN: -- or just raise your

15 hand, and he'll get to you.

16 MR. EAGAN: I know of Mr. Minter.

17 Okay.

18 MS. KIMPAN: Very good. Keep -- get

19 Jeff's attention. Okay.

20 MR. SIMPSON: My name is David

21 Simpson. I've worked at the Portsmouth

22 Gaseous Diffusion Plant for approximately

23 21 years. I'm a current Instrument

24 Technician there. (Reading)

25 "I was hired April Fools Day 1980.

1 During the orientation briefing, the
2 company bragged how great they were
3 for pouring PCBs --"
4 which stands for PolyChlorinatedBeconals
5 "-- on the ground south of the X326
6 building and the X600 building.
7 They claimed they were doing
8 Bioremediation, and the bacteria
9 would decompose this material and
10 make it nonhazardous. In fact, just
11 a few years ago, we spent millions
12 of dollars trying to clean up this
13 area, and we finally gave up and put
14 a clay cap on it.
15 "For decades, the Department of
16 Energy's methodology for disposing
17 of hazardous waste was to pour it on
18 the ground. When it came to
19 workers, they were treated as a
20 consumable part of the plant to use
21 up and then throw away.
22 "We are only now just discovering
23 how much and to what extent the
24 coverup of our work exposures or
25 radiation and chemicals may have

1 been.

2 "We are still just in the
3 beginning stages of discovering how
4 our medical health, exposure data,
5 medical records have been
6 manipulated, altered, falsified, and
7 diluted with the test results of
8 control groups to lower or minimize
9 our exposure doses.

10 "We have company documents that
11 clearly show that the company
12 deliberately withheld information
13 that pertained to the chemicals that
14 they worked with and how hazardous
15 they were. These documents state
16 that the sole purpose for the
17 company to withhold this information
18 was to prevent the workers from
19 filing medical claims and costing
20 the company money by paying out
21 medical awards.

22 "We have also discovered that
23 industrial hygiene and health
24 physics programs were not adequate
25 to assess the workers' exposures.

1 Some examples of this are: 1)
2 altered Thermoluminescent Dosimeter
3 badge readings; 2) known
4 contaminated Asbestos samples that
5 came back below threshold limits; 3)
6 invivo that was calibrated for
7 Uranium but gave results for
8 numerous other radionuclides for a
9 false sense of security; 4)
10 urinalysis has a plus or minus 100%
11 accuracy even when done accurately;
12 5) cases where the company withheld
13 industrial hygiene or health physics
14 data until after the work was
15 completed to prevent the requirement
16 of increased personal protective
17 equipment due to the high exposures.

18 "This information shows a clear
19 trend to hide and deny information
20 and to hinder access of information
21 to the affected worker.

22 "The workers were also discouraged
23 in their quest for Industrial
24 Hygiene Health Physics Data or
25 medical data by the company's policy

1 of classified or secret need-to-know
2 information. Workers were required
3 to sign documents of nondisclosure
4 of information at the time of
5 employment.

6 "As we research our exposure
7 records and do risk mapping of the
8 plant, we are finding new hazards or
9 chemicals we were exposed to. It is
10 still extremely difficult for
11 current working employees to get
12 information they need to file a
13 claim, and it is almost impossible
14 for a retiree or someone who has
15 left the plant to reconstruct their
16 work record.

17 "Subtitle D, Section 3661 of
18 assistance in State Workers'
19 Compensation mandates by law that
20 the Secretary of Energy is to
21 provide assistance to the Department
22 of Energy contractor employee in
23 filing a claim under the appropriate
24 State Workers' Compensation system.

25 "The workers are proud and highly

1 trained. They have worked for
2 decades in highly hazardous work
3 environments. Working to protect
4 America. Working to give Americans
5 peace of mind so they may sleep at
6 night. They are Cold War Veterans.
7 They are patriots, for they have, in
8 many cases, protected our country
9 with their life. Now we -- now are
10 we going to throw them out with the
11 trash? Are we going to abandon them
12 in their time of need? They are
13 only asking for just and fair
14 compensation for the sacrifices they
15 have given to their country.

16 "I challenge you to tell these
17 workers that our country is going to
18 abandon them now in their time of
19 need.

20 "Section 3661 requires the
21 government to step up now to give
22 assistance to the patriots in their
23 time of need. Now is the time for
24 everyone in this room to do their
25 part for their country and these

1 workers and give them the assistance
2 they need.

3 "Thank you."

4 MS. KIMPAN: Thank you very much,
5 Dave. Next is Garry Sexton, and after
6 that Charles Wiltshire.

7 MR. SEXTON: (Reading)

8 "My name is Garry Sexton, and I've
9 worked at the Portsmouth Gaseous
10 Diffusion Plant in Piketon for a
11 total of 17 years. I'm a Chemical
12 Operator. In addition to radiation,
13 I've been exposed to numerous
14 chemicals which I feel will
15 ultimately take my life early. Two
16 years ago, I tested positive for
17 Asbestos in my lungs.

18 "The Department of Energy has
19 acknowledged that they are
20 responsible for making workers sick.
21 It now seems through their inaction
22 they are denying this
23 acknowledgement. The Department of
24 Energy has returned to their
25 previous position of denial by

1 allowing workers to be denied State
2 Workers' Compensation cases who they
3 know and admitted were made sick by
4 the workplace. They are returning
5 to the practice of sticking their
6 head in the sand and allowing
7 others to address their issues.

8 "In a 1985 Government Accounting
9 Office report, the union stated that
10 the workers' exposures and
11 occupational injuries were
12 understated. The response to that
13 statement was that the union did not
14 provide documentation to support the
15 allegation. The Union did not have
16 this information, even though
17 Department of Energy and government
18 contractor historical documentation
19 supports these allegations.
20 historical reports, from the
21 Controller General state that the
22 Department of Energy does not
23 adequately enforce its Safety and
24 Health programs. Department of
25 Energy did not acknowledge the

1 wrongdoing until the workers
2 physically handed them the proof
3 many years later. The Department of
4 Energy failed in their regulatory
5 responsibilities and did not take
6 any action or admission until the
7 workers confronted them with
8 specific documented proof.
9 "Certainly you know up to now
10 winning exposure-related State
11 compensation cases was an uphill
12 battle. Don Pettit, who has worked
13 41 years as a District Director and
14 Hearing Officer of the Ohio Bureau
15 of Workers' Compensation had this to
16 say, and I quote, 'I would probably
17 disallow a claim if there were no
18 evidence of a plant allowable limit
19 being exceeded, or if there was no
20 statement from the doctor's
21 evaluation indicating an illness.
22 When I would investigate claims of
23 occupational disease, I would have
24 to rely heavily on the medical
25 exposure data and the medical

1 facility at the site.'

2 "Years later, it was discovered by
3 the workers and confirmed by
4 independent agencies that the
5 monitoring data that would have been
6 used in Mr. Pettit's evaluations was
7 manipulated, omitted and misleading.
8 Obviously, this was done in favor of
9 the contractor.

10 "Mr. Pettit said, 'It was pretty
11 common for the company to fight the
12 claims'. He mentioned that the
13 Atomic Energy Commission had flown
14 in experts from Oak Ridge to fight
15 one case.

16 "Mr. Pettit investigated many
17 claims, which required him to visit
18 the site. He entered buildings that
19 required radiological monitoring for
20 the worker. He said, 'I never wore
21 a film or thermoluminescent
22 dosimeter badge, which was used for
23 measuring penetrating
24 radiation monitoring. I never
25 received a request to submit a urine

1 sample to check for radionuclide
2 contamination uptake during my
3 visits to the site. I was told that
4 my visits to the site are
5 documented, but my personal
6 radiological or chemical dosimetry
7 records did not exist at the
8 Portsmouth site.' This is another
9 example of deficient monitoring
10 programs.

11 "There is also an issue of
12 causation and dose reconstruction
13 that I would like to address. Under
14 these rules, the National Institute
15 of Occupational Safety and Health
16 will assist in determining
17 causation. They will do this by
18 using data that we know either over
19 or underestimated and the answers
20 will be in error. Recently, NIOSH
21 reported on a Mortality study that
22 had been conducted at the
23 Portsmouth, Ohio, site. this study,
24 admittedly, used the same data that
25 was questionable, or is

1 questionable. Even though there are
2 statistically nonsignificant
3 excesses of cancer identified in the
4 study, not enough workers have died
5 to prove statistically that their
6 exposures caused their illness.

7 How many workers have to die before
8 we have the formal documentation to
9 support future compensation claims?

10 "Many people are sick and have
11 died from radiological and chemical
12 exposures at our site. The only
13 just thing for the Department of
14 Energy to do with respect to
15 Workers' Compensation cases is to
16 help the workers file the claim and
17 to ask the State and companies not
18 to contest the claims. Live up to
19 your commitment of helping these
20 workers.

21 Thank you.

22 MS. KIMPAN: This is Charles
23 Wiltshire, if I'm pronouncing that
24 correctly. And next will be Ralph Glenn.

25 MR. WILTSHIRE: (Reading)

1 "Good afternoon. I'm Charles
2 Wiltshire, a production Process
3 Operator at the Portsmouth Gaseous
4 Diffusion Plant located near
5 Portsmouth, Ohio. I have worked at
6 the plant for 29 years.

7 "It is now an admitted fact by the
8 Department of Energy that my
9 coworkers and I were exposed to
10 toxic chemicals with little or no
11 monitoring. It is a fact that
12 exposure data has been manipulated
13 to show little or no exposure. It
14 is admitted that these exposures
15 cause illness and death. These are
16 admitted facts.

17 "The tragic part is trying to
18 maintain faith in a country I took
19 an oath to defend with my life if
20 need be. Imagine a young man 21
21 years old in the height of the Cold
22 War going to work at the only
23 facility that enriched Uranium to a
24 very high assay for his country's
25 nuclear needs.

1 "The first time I walked into a
2 process building, I was amazed at
3 the apparent overall cleanliness of
4 the facility. My supervisor told me
5 the floors were so clean you could
6 eat off them. My experience with
7 factories at this time was limited
8 to a dirty shoe factory.

9 "In my first 15 years as a process
10 operator at the plant, we were not
11 allowed to wear company-issue
12 clothing and worked every day in our
13 personal clothing, which was worn
14 home. I felt safe because DOE
15 regulations guaranteed me a safe
16 workplace.

17 "As I matured, I soon found, I
18 soon found out for the Department of
19 Energy to regulate their own
20 facility was like having the 'fox
21 guard the hen house'. The floors
22 were not clean enough to eat off of.
23 The contamination that causes
24 illness and death was not anything
25 like the cow manure you got into on

1 the farm and could wash off with
2 soap and water.

3 "Now comes Congress and passes a
4 law to compensate workers and atone
5 for DOE's sins. I still have faith
6 in my country. They are going to
7 make things right.

8 "But somehow the Department of
9 Energy must again set the rules to
10 regulate and administer the
11 compensation program. Why are you
12 trying to overthrow the will of
13 Congress? Reading these proposed
14 rules reminds me of something my
15 granddad would say: Fellows, the
16 bale of wool you're trying to pull
17 over my eyes is two-thirds cotton.

18 "What good is a Physician Panels
19 to determine whether the illness
20 arose out of employment by a DOE
21 contractor if the program office
22 must first make the decision of
23 whether or not the claim ever goes
24 to a Physicians Panel. How can a
25 Physicians Panel review a claim

1 they never see?

2 "Then what good is it to have the
3 Physicians Panel to make a
4 determination and then have the
5 program manager not to accept the
6 determination or to second guess it.

7 "In fact, why even have a
8 Physicians Panel if the program
9 manager makes all the
10 determinations? Once again, we have
11 the Fox (the Department of Energy)
12 guarding the Hen House (the Workers'
13 Compensation Program)."

14 Thank you.

15 MS. KIMPAN: Next we'll have Ralph
16 Glenn followed by Dan Minter.

17 MR. GLENN: (Reading)

18 "My name is Ralph D. Glenn. I
19 work at the Portsmouth Gaseous
20 Diffusion Plant as an electrician.

21 I started in 1975. There are
22 several topics I would like to speak
23 on, but time does not allow.

24 "Like many of my coworkers, I did
25 my part to support our country's

1 effort during the Cold War. We
2 produced highly enriched Uranium for
3 the military effort as well as used
4 in power plants to furnish our
5 country with electricity.

6 "But also, I was like many of my
7 coworkers. I developed cancer. For
8 me, it was in 1990. I started to
9 have kidney trouble. After some
10 tests, I was told I had a growth on
11 my right kidney and that it had to
12 come out. My wife and I drove from
13 the hospital in Columbus, Ohio, back
14 to southern Ohio and discussed what
15 I wanted her to do about the family,
16 the bills, and life in general if it
17 turned out bad, as I had seen it
18 before.

19 "I went back to the James Cancer
20 Center in Columbus, and by the grace
21 of God, they removed the tumor and
22 most of my right kidney, which was
23 cancerous, and I'm a survivor. Many
24 of my coworkers were not that
25 fortunate. Many have died and many

1 are fighting.

2 "I'd like to say they should be
3 covered by State and Federal
4 Workers' Compensation. These rules
5 tell me the Department of Energy is
6 not doing or going to do what they
7 are supposed to do by law. That is,
8 to assist sick workers to get what
9 they rightfully deserve.

10 "We are not going to just roll
11 over and take these rules. We are
12 urging you to change them tonight,
13 and we will continue our fight to
14 get Cold War Veterans the assistance
15 they rightfully deserve.

16 "And God bless America."

17 MS. KIMPAN: Thank you, Mr. Glenn.

18 After Dan Minter, we're going to have
19 Paul Basye.

20 MR. MINTER: For the purpose of
21 trying to be short, which typically, I'm
22 not, I guess I can say ditto to all the
23 testimony that we're heard tonight.

24 Clearly, you hear the compassion and
25 the interest of the folks.

1 I do want to bring up another issue,
2 and I'll just submit the rest of my
3 testimony in writing to expedite the
4 time.

5 I do want to bring up a point about
6 the State Compensation process, and that
7 is the United States Enrichment
8 Corporation being a self-insured
9 employer.

10 Many of these illnesses, cancers are
11 not spontaneous to the exposure. Persons
12 diagnosed today have two years in the
13 State program to file a claim. They
14 do that in many cases with their actual
15 employer, but this employer, which is
16 self-insured and has an economic
17 reason for fighting such claim.

18 The Department of Energy currently
19 has no mechanism to direct or eliminate
20 that opposition.

21 So I just want to simply state for
22 the record that I don't see anything in
23 any of the legislation to deal with that
24 anomaly and it's certainly one that
25 exists, both for the Portsmouth and the

1 Paducah workers who, in fact, as you
2 heard tonight, I guess, special cohort
3 received some benefit potentially, but
4 now those benefits may be denied as a
5 result of this anomaly of the finality
6 with the private corporation and being
7 self-insured.

8 And certainly needs to address that.
9 I also want to take the opportunity to
10 thank those folks that helped the
11 legislation, Senator Voinovich
12 particularly, Mike DeWine and certainly
13 Senator Strickland.

14 And, again, I do think they made it
15 clear what their intent and direction was
16 to follow. These regulations you've
17 heard tonight certainly are falling short
18 of the expectation of these workers, the
19 community, the Congressional staff that
20 developed these, and I urge you to heave
21 to their direction.

22 So thank you.

23 MS. KIMPAN: You're welcome to leave
24 your statement, Dan.

25 MR. MINTER: No. I think they

1 covered very clearly --

2 MS. KIMPAN: Thank you very much.

3 Mr. Basye?

4 MR. BASYE: You've got my statement?

5 MS. KIMPAN: You know, I don't,

6 Paul. Thanks, sir.

7 MR. BASYE: Good evening.

8 (Reading)

9 "My name is Paul Basye, Jr. I'm

10 45 years old, and I've been an

11 Instrument Mechanic at the

12 Portsmouth Gaseous Diffusion Plant

13 for almost 22 years.

14 "In 1980 and 1981, I, along with

15 many of my fellow Instrument

16 Mechanics, we drilled holes in the

17 transit tap duct, which is the cell

18 housing for buffer air lines. That

19 transit is, in fact, pure Asbestos.

20 In the earliest -- there were no

21 special techniques for drilling

22 these holes early on. Later, we

23 started using water from squirt

24 bottles which wet the dust to keep

25 it off us and the floors. Only

1 after I had enough seniority to get
2 out of the area, bid to another job,
3 I did get some training which told
4 us that without using a surfactant,
5 a soap, it was, virtually did no
6 good to keep this from, this
7 Asbestos from being flyable and
8 inhalable."

9 The illness from Asbestos exposure, which
10 I had uncertainly, most certainly been
11 exposed to, is Asbestoses. It has a
12 latency period of about 33 years. But
13 I'm told that since I'm only 45 years
14 old, I'm too young to be tested for it.
15 (Reading)

16 "In 1980s I bid into the
17 maintenance shop area thinking my
18 exposures would be less, not only to
19 Asbestos, but to the contamination."

20 One of the jobs that I had to do in the
21 facility was the decontamination facility
22 where we tore down control valves,
23 process control valves up to 30 inches in
24 size. We burned and cut out the bearings
25 and the vanes and the bearings on these

1 control valves, the lower bearings on
2 which were usually packed in green salt,
3 as we called it. The green salt
4 contained many transuranics, even
5 Plutonium. They were found at the
6 facility later, only after we had better
7 monitoring equipment. (Reading)

8 "In 1990, we found Arsenic in the
9 instrument lines. We were never
10 routinely monitored for Arsenic."
11 Never. It was rumored, in fact, that the
12 company had put the Arsenic in this line
13 on purpose. We were only checked for
14 radionuclides. Never checked for
15 Arsenic. And any surveys we were asked
16 that, that we asked to have performed.

17 In the mid-1990s, I filed numerous
18 safety complaints for the company raising
19 the contamination levels on the radiation
20 monitoring equipment. There was a
21 consistent effort by the company to raise
22 these levels. And contamination wasn't
23 -- there was constant effort by the
24 company to raise these levels which would
25 allow the purpose -- the excuse was it

1 was not possible for them to get levels
2 to level out.

3 We told the company that this type
4 of thinking was why so much contamination
5 was spread in areas today. Manipulating
6 the set points of the monitoring
7 equipment creates a doubt in the
8 monitoring programs. Now we're going to
9 use this data from the monitoring
10 programs to determine related illnesses
11 for claims purposes?

12 This law was put into place by
13 Congress and the President to help the
14 'Cold War Veterans' that gave up their
15 health in the name of National Security.
16 Now the DOE is putting obstacles in our
17 road instead of helping us file our
18 claims.

19 We will fight these proposals, I can
20 assure you. Thank you.

21 MS. KIMPAN: Thank you very much,
22 Mr. Basye. At this time, we have no
23 other speakers who have signed up to
24 speak.

25 We have some additional written

1 comments. Is there anyone else here who
2 would like to make a statement? If so,
3 just feel free to come on up and identify
4 yourself.

5 MR. SIMPSON: Can I read a
6 statement from my coworker who couldn't
7 make it tonight?

8 MS. KIMPAN: You certainly may.
9 While he's preparing another statement,
10 I'd like to take this opportunity -- this
11 may be our last comment here -- to thank
12 the participants on behalf of Secretary
13 Cary, Dr. Falco, and myself, Mr. Eagan,
14 and the Department of Energy. I'd like
15 to thank you all for taking the time.

16 I know that many of you had long
17 rides and have long rides back. In
18 particular, as folks heard, there are
19 many, many representatives from
20 Portsmouth, some folks from Paducah and
21 Oak Ridge. I want to thank Dan Minter
22 and others for helping get the word out
23 and assure that we had a good turnout.

24 We really value the opportunity to
25 hear the comments from the folks that are

1 going to be affected by these rules in
2 this law.

3 And whose statement will you be
4 reading, sir?

5 MR. SIMPSON: This statement
6 is from Marty Ross. He is also a
7 Portsmouth, Ohio, Gaseous Diffusion
8 worker.

9 MS. KIMPAN: Okay. And I think we
10 have a copy up here.

11 MR. SIMPSON: I laid one copy
12 up there and you've probably got extras
13 around here.

14 MS. KIMPAN: Very good. Proceed
15 please.

16 MR. SIMPSON: Yeah. (Reading)

17 "My name is Marty Ross. I am 45
18 years old. I live in Portsmouth,
19 Ohio. I started at the Portsmouth
20 Plant in 1975 when I was 19 years
21 old. I applied for job while I was
22 still in high school. There were
23 few jobs in the area following the
24 first oil embargo and several of my
25 parents' friends worked at the

1 plant. I didn't know what went on
2 at the plant, but it was a job.

3 "I started in the Janitor
4 Department and then moved to the
5 Production Process Operations in
6 1976. I moved over to the
7 Centrifuge Plant when it started,
8 then I got bumped back when DOE
9 pulled the plug on the project in
10 1985."

11 That's referring to the Centrifuge Plant.

12 "In 1997, I bid to Stores
13 (shipping/receiving) staying there
14 until I was surplused back to
15 Janitors in September of this year.

16 In all of these jobs, I would be
17 assigned several different tasks
18 involving all sorts of job hazards.
19 Sometimes I knew little about the
20 area I was working in. Sometimes I
21 didn't know anything about the area
22 or the chemicals that were present.
23 Sometimes the knowledge that was
24 given to me was 'ah, that stuff
25 won't hurt you. Heck, you could

1 probably eat that stuff'.
2 "As I worked in these various
3 areas, I was exposed to many
4 chemicals, temperature extremes,
5 loud noises, rotating shift work and
6 radiation from different sources. I
7 worked where the cleaning of parts
8 was done. There were boil-out tanks
9 and smelting furnaces. I worked in
10 withdrawal stations and pulled
11 samples from cell manifolds. I did
12 leak testing, climbing all over
13 equipment that received little or no
14 cleaning. There were many other
15 jobs that exposed me to harm in one
16 way or another unbeknownst to me at
17 the time. It wasn't until we had
18 the public meeting --"
19 and what he's referring to a year or so
20 ago, I think
21 "-- that I caught on to what hazards
22 I had been exposed to on the plant
23 site and the fact that it was
24 impossible to monitor what my
25 personal exposure may have been.

1 This all caused me distress. But at
2 that meeting, our elected officials
3 said that they would see that the
4 Cold War workers would get what they
5 deserved. This made me feel a lot
6 better about my life and about my
7 future.

8 "I was even more relieved when
9 Congress passed the compensation
10 bill. But now I'm learning that
11 some of the language and a lot of
12 the interpretation are changing.
13 Subtitle D was there for a purpose.
14 There was enough support and
15 credentials earlier to become law in
16 the first place; it should not be
17 deflated now. Subtitle D should be
18 there for the workers that have
19 given all for this country. It was
20 set up to help those who have died
21 or gotten ill because of their
22 employment at this facility. The
23 problem has not gone away, nor
24 should the protection afforded to
25 these workers go away.

1 Thank you.

2 MS. KIMPAN: One last time. If
3 there's anyone who has not yet presented
4 testimony and would like to, please come
5 forward. All right.

6 Again, I'd like to thank you all for
7 attending, and I would like to thank the
8 court reporter, Ms. Sager, as well, for
9 capturing these comments.

10 Thank you very much. This meeting
11 is adjourned.

12 MS. COLLEY: I had these statements
13 from some other workers.

14 MS. KIMPAN: Actually, let me say
15 that any of the other written statements
16 that folks have submitted that we have
17 copies of are submission to the record,
18 and I'll reiterate here at the tail end,
19 folks can submit written statements up
20 through November 9th on the bill.

21 FROM THE AUDIENCE: Have you got a
22 copy of this?

23 MS. KIMPAN: Oh, yes. I'm sorry.

24 Okay. A lot of after adjournment stuff.

25 A copy of the entire report that the

1 court reporter is taking will be put on
2 the DOE website.

3 If anyone doesn't have access to the
4 World Wide Web, contact Mr. Eagan or
5 myself, give us some time to get Ms.
6 Sager's report in, and we'll make sure
7 you get a copy.

8 * * *

9 * *

10 *

11 MS. COLLEY: We'd like to have a
12 meeting in Portsmouth, Ohio. And we're
13 very disappointed that they didn't get it
14 to the media in enough time because our
15 story needs to be told and without the
16 media, it's not going to get out.

17 I also came with these from Bell,
18 and Mike DePaula, and Gary Lawfer
19 (phonetic).

20 Again, we're very disappointed that
21 no media came. I would sure like to know
22 what is so secret at Piketon that we
23 can't get the media coverage out.

24 (THERUPON, the Public Hearing was
25 adjourned at 7:20 p.m.)

C E R T I F I C A T E

STATE OF OHIO:
SS:
COUNTY OF HAMILTON:

4 I, Julia C. Sager, the undersigned,
5 a duly qualified and commissioned Notary Public
6 within and for the State of Ohio, do hereby
7 certify that at the time and place stated herein,
8 I recorded in stenotypy and thereafter transcribed
9 by computer-aided transcription into typewritten
10 form under my supervision the within 169 (one
11 hundred sixty-nine) pages, and that the foregoing
12 is a true, complete and accurate report of my said
13 stenotypy notes.

14 I further certify that I am neither
15 a relative of nor attorney, employee for any party
16 or their counsel and have no interest in the
17 result of this meeting.

18 IN WITNESS WHEREOF, I have hereunto
19 set my hand and official seal of office at Liberty
20 Township, Ohio, this 6th day of November, 2001.

21

22 _____
Commission Expires March 26, 2006